OFFICIAL CODE OF GEORGIA ANNOTATED

2015 Supplement

Including Acts of the 2015 Regular Session of the General Assembly

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®

Published Under Authority of the State of Georgia

Volume 23

2012 Edition

Title 31. Health

Title 32. Highways, Bridges, and Ferries

Including Annotations to the Georgia Reports
and the Georgia Appeals Reports

Place in Pocket of Corresponding Volume of Main Set

LexisNexis®
Charlottesville, Virginia

ISBN 978-0-327-11074-3 (set)
ISBN 978-0-7698-4589-0

5014532

(Pub.41805)

THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2015 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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CHAPTER 1

GENERAL PROVISIONS; ACCESS TO EYE CARE

Article 1

General Provisions

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ARTICLE 1

GENERAL PROVISIONS

31-1-14. Physician Orders for Life-Sustaining Treatment (POLST) forms.

(a) As used in this Code section, the term:

(1) "Attending physician" means the physician who has primary responsibility at the time of reference for the treatment and care of the patient.

(2) "Authorized person" shall have the same meaning as in Code Section 31-39-2.

(3) "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of an order regarding end of life care decisions, including the benefits and disadvantages of such an order, and to reach an informed decision regarding the order.

(4) "Health care facility" shall have the same meaning as in Code Section 31-32-2.

(5) "Health care provider" shall have the same meaning as in Code Section 31-32-2.

(6) "Life-sustaining procedures" means medications, machines, or other medical procedures or interventions which, when applied to a patient in a terminal condition or in a state of permanent unconsciousness, could in reasonable medical judgment keep the patient alive but cannot cure the patient and where, in the judgment of the attending physician and a second physician, death will occur without such procedures or interventions. The term "life-sustaining procedures" shall not include the provision of nourishment or hydration

but a patient may direct the withholding or withdrawal of the provision of nourishment or hydration in a POLST form. The term "life-sustaining procedures" shall not include the administration of medication to alleviate pain or the performance of any medical procedure deemed necessary to alleviate pain.

(7) "Physician Orders for Life-Sustaining Treatment form" or "POLST form" means a form executed pursuant to this Code section which provides directions regarding the patient's end of life care.

(8) "Provision of nourishment or hydration" means the provision of nutrition or fluids by tube or other medical means.

(9) "State of permanent unconsciousness" means an incurable or irreversible condition in which the patient is not aware of himself or herself or his or her environment and in which the patient is showing no behavioral response to his or her environment.

(10) "Terminal condition" means an incurable or irreversible condition which would result in the patient's death in a relatively short period of time.

(b) The department shall develop and make available a Physician Orders for Life-Sustaining Treatment form. Such form shall provide directions regarding the patient's end of life care and may be voluntarily executed by either a patient who has decision-making capacity and an attending physician or, if the patient does not have decision-making capacity, by the patient's authorized person and an attending physician; provided, however, that this shall not prevent a health care facility from imposing additional administrative or procedural requirements regarding a patient's end of life care decisions. A POLST form may be executed when a patient has a serious illness or condition and the attending physician's reasoned judgment is that the patient will die within the next 365 days; provided, however, that a POLST form may be executed at any time if a person has been diagnosed with dementia or another progressive, degenerative disease or condition that attacks the brain and results in impaired memory, thinking, and behavior. A POLST form, if signed by an authorized person, shall indicate the relationship of the authorized person to the patient pursuant to paragraph (3) of Code Section 31-39-2.

(c)(1) A POLST form shall constitute a legally sufficient order that may be utilized by a health care provider or health care facility in accordance with its policies and procedures regarding end of life care. Such an order shall remain effective unless the order is revoked by the attending physician upon the consent of the patient or the patient's authorized person. An attending physician who has issued such an order and who transfers care of the patient to another physician shall inform the receiving physician and the health care

facility, if applicable, of the order. Review of the POLST form is recommended at care transitions, and such review should be specified on the form.

(2) A POLST form signed by the patient and attending physician and indicating "allow natural death" or "do not resuscitate" or the equivalent may be implemented without restriction. If the POLST form (i) is signed by the attending physician and an authorized person instead of the patient and (ii) indicates "allow natural death" or "do not resuscitate" or the equivalent, in compliance with subsection (c) of Code Section 31-39-4, the POLST form may be implemented or become effective when the patient is a candidate for nonresuscitation, and such consent shall be based in good faith upon what such authorized person determines such candidate for nonresuscitation would have wanted had such candidate for nonresuscitation understood the circumstances under which such order is being considered.

(3) A POLST form addressing interventions other than resuscitation and signed by the patient and attending physician may be implemented without restriction. If the POLST form is signed by an authorized person who is the health care agent named by the patient in an advance directive for health care and the attending physician, in compliance with paragraph (1) of subsection (e) of Code Section 31-32-7, all treatment indications on the POLST form may be implemented. If the POLST form is signed by an authorized person who is not the health care agent named by the patient in an advance directive for health care, treatment indications on the POLST form may be implemented or become effective only when the patient is in a terminal condition or a state of permanent unconsciousness; provided, however, that a POLST form may become effective at any time if a person has been diagnosed with dementia or another progressive, degenerative disease or condition that attacks the brain and results in impaired memory, thinking, and behavior.

(4) A POLST form shall be portable with the patient across care settings and shall be valid in any health care facility in which the patient who is the subject of such form is being treated; provided, however, that this shall not prevent a health care facility from imposing additional requirements regarding a patient's end of life care decisions. A health care facility and a health care provider, in its discretion, may rely upon a POLST form as legally valid consent by the patient to the terms therein.

(5) A copy of a POLST form shall be valid and have the same meaning and effect as the original document.

(6) A physician orders for life-sustaining treatment form which was executed in another state, which is valid under the laws of such

state and which is substantially similar to the Georgia POLST form, and contains signatures of (i) either the patient or an authorized person and (ii) the attending physician, shall be treated as a POLST form which complies with this Code section.

(d)(1) Each health care provider, health care facility, and any other person who acts in good faith reliance on a POLST form shall be protected and released to the same extent as though such provider, facility, or other person had interacted directly with the patient as a fully competent person. Without limiting the generality of the foregoing, the following specific provisions shall also govern, protect, and validate the acts of an authorized person and each such health care provider, health care facility, and any other person acting in good faith reliance on such POLST form:

(A) No such health care provider, health care facility, or person shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for complying with a patient's end of life care decisions as provided in a POLST form, even if death or injury to the patient ensues;

(B) No such health care provider, health care facility, or person shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for failure to comply with a patient's end of life care decisions in a POLST form, so long as such health care provider, health care facility, or person promptly informs the patient or the patient's authorized person of such health care provider's, health care facility's, or person's refusal or failure to comply with such patient's end of life care decisions in a POLST form. The authorized person shall then be responsible for arranging the patient's transfer to another health care provider or health care facility. A health care provider, health care facility, or person who is unwilling to comply with a patient's end of life care decisions in a POLST form shall continue to provide reasonably necessary consultation and care in connection with the pending transfer;

(C) If the actions of a health care provider, health care facility, or person who fails to comply with a patient's end of life care decisions in a POLST form are substantially in accord with reasonable medical standards at the time of reference; and such provider, facility, or person cooperates in the transfer of the patient, then the health care provider, health care facility, or person shall not be subject to civil or criminal liability or discipline for unprofessional conduct for failure to comply with such patient's end of life care decisions in a POLST form;

(D) No authorized person who, in good faith, acts with due care for the benefit of the patient and in accordance with a patient's end

of life care decisions in a POLST form, or who fails to act, shall be subject to civil or criminal liability for such action or inaction; and

(E) If a POLST form is revoked, a person shall not be subject to criminal prosecution or civil liability for acting in good faith reliance upon a patient's end of life care decisions in a POLST form unless such person had actual knowledge of the revocation.

(2) No person shall be civilly liable for failing or refusing in good faith to effectuate a patient's end of life care decisions in a POLST form regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration.

(3) No physician or any person acting under a physician's direction and no health care facility or any agent or employee thereof who, acting in good faith in accordance with the requirements of this Code section, causes the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration from a patient or who otherwise participates in good faith therein shall be subject to any civil or criminal liability or guilty of unprofessional conduct therefor.

(4) Any person who participates in the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration pursuant to a patient's end of life care decisions in a POLST form and who has actual knowledge that such POLST form has been properly revoked shall not have any civil or criminal immunity otherwise granted under this subsection for such conduct.

(e) In the event there are any directions in a patient's previously executed living will, advance directive for health care, durable power of attorney for health care, do not resuscitate order, or other legally authorized instrument that conflict with the directions in a POLST form, the most recent instrument will take precedence to the extent of the conflict.

(f) Nothing in this Code section shall be construed to authorize any act prohibited by Code Section 16-5-5. Any health care provider, health care facility, or any other person who violates Code Section 16-5-5 shall not be entitled to any civil immunity provided pursuant to this Code section. (Code 1981, § 31-1-14, enacted by Ga. L. 2015, p. 305, § 1/SB 109.)

Effective date. — This Code section became effective July 1, 2015.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, Code Section 31-1-14, as enacted by Ga. L. 2015, p. 312, § 2/SB 126, was redesignated as Code Section 31-1-15.

31-1-15. Storage, maintenance, control, and oversight of auto-injectable epinephrine by certain authorized entities.

(a) As used in this Code section, the term:

(1) "Authorized entity" means any entity or organization, other than a school subject to Code Section 20-2-776.2, in connection with or at which allergens capable of causing anaphylaxis may be present, as identified by the department. The department shall, through rule or other guidance, identify the types of entities and organizations that are considered authorized entities no later than January 1, 2016, and shall review and update such rule or guidance at least annually thereafter. For purposes of illustration only, such entities may include, but are not limited to, restaurants, recreation camps, youth sports leagues, theme parks and resorts, and sports arenas.

(2) "Auto-injectable epinephrine" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(3) "Health care practitioner" means a physician licensed to practice medicine in this state, an advanced practice registered nurse acting pursuant to the authority of Code Section 43-34-25, and a physician assistant acting pursuant to the authority of subsection (e.l) of Code Section 43-34-103.

(b) An authorized entity may acquire and stock a supply of auto-injectable epinephrine pursuant to a prescription issued in accordance with Code Section 26-4-116.1. Such auto-injectable epinephrine shall be stored in a location readily accessible in an emergency and in accordance with the auto-injectable epinephrine's instructions for use and any additional requirements that may be established by the department. An authorized entity shall designate employees or agents who have completed the training required by subsection (d) of this Code section to be responsible for the storage, maintenance, control, and general oversight of auto-injectable epinephrine acquired by the authorized entity.

(c) An employee or agent of an authorized entity, or any other individual, who has completed the training required by subsection (d) of this Code section may use auto-injectable epinephrine prescribed pursuant to Code Section 26-4-116.1 to:

(1) Provide auto-injectable epinephrine to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, or to the parent, guardian, or caregiver of such individual, for immediate administration, regardless of whether the

individual has a prescription for auto-injectable epinephrine or has previously been diagnosed with an allergy; and

(2) Administer auto-injectable epinephrine to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, regardless of whether the individual has a prescription for auto-injectable epinephrine or has previously been diagnosed with an allergy.

(d) An employee, agent, or other individual described in subsection (b) or (c) of this Code section shall complete an anaphylaxis training program and repeat such training at least every two years following completion of the initial anaphylaxis training program. Such training shall be conducted by a nationally recognized organization experienced in training laypersons in emergency health treatment or an entity or individual approved by the department. Training may be conducted online or in person and, at a minimum, shall cover:

(1) How to recognize signs and symptoms of severe allergic reactions, including anaphylaxis;

(2) Standards and procedures for the storage and administration of auto-injectable epinephrine; and

(3) Emergency follow-up procedures.

(e) An authorized entity that possesses and makes available auto-injectable epinephrine and its employees, agents, and other individuals; a health care practitioner that prescribes or dispenses auto-injectable epinephrine to an authorized entity; a pharmacist or health care practitioner that dispenses auto-injectable epinephrine to an authorized entity; and an individual or entity that conducts the training described in subsection (d) of this Code section shall not be liable for any injuries or related damages that result from any act or omission taken pursuant to this Code section; provided, however, that this immunity does not apply to acts or omissions constituting willful or wanton misconduct. The administration of auto-injectable epinephrine in accordance with this Code section is not the practice of medicine or any other profession that otherwise requires licensure. This Code section does not eliminate, limit, or reduce any other immunity or defense that may be available under state law, including that provided under Code Section 51-1-29. An entity located in this state shall not be liable for any injuries or related damages that result from the provision or administration of auto-injectable epinephrine outside of this state if the entity:

(1) Would not have been liable for such injuries or related damages had the provision or administration occurred within this state; or

(2) Is not liable for such injuries or related damages under the law of the state in which such provision or administration occurred.

(f) An authorized entity that possesses and makes available auto-injectable epinephrine shall submit to the department, on a form developed by the department, a report including each incident on the authorized entity's premises that involves the administration of auto-injectable epinephrine pursuant to subsection (c) of this Code section and any other information deemed relevant by the department. The department shall annually publish a report that summarizes and analyzes all reports submitted to it under this subsection.

(g) The department shall establish requirements regarding the storage, maintenance, control, and oversight of the auto-injectable epinephrine, including but not limited to any temperature limitations and expiration of such auto-injectable epinephrine. (Code 1981, § 31-1-15, enacted by Ga. L. 2015, p. 312, § 2/SB 126.)

Effective date. — This Code section became effective July 1, 2015.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, Code Section 31-1-14, as enacted by Ga. L. 2015, p. 312, § 2/SB 126, was redesignated as Code Section 31-1-15.

ARTICLE 3

GEORGIA HEALTH CARE FREEDOM

Effective date. — This article became effective April 15, 2014.

31-1-40. Prohibition on expenditure or use of state resources to advocate for or intended to influence citizens in support of federal Affordable Care Act.

(a) Neither the state nor any department, agency, bureau, authority, office, or other unit of the state nor any political subdivision of the state shall expend or use moneys, human resources, or assets to advocate or intended to influence the citizens of this state in support of the voluntary expansion by the State of Georgia of eligibility for medical assistance in furtherance of the federal "Patient Protection and Affordable Care Act," Public Law 111-148, beyond the eligibility criteria in effect on April 15, 2014, under the provisions of 42 U.S.C. Section 1396a(a)(10)(A)(i)(VIII) of the federal Social Security Act, as amended.

(b) The Attorney General shall enforce the provisions of this Code section in accordance with Article V, Section III, Paragraph IV of the Constitution of the State of Georgia.

(c) Nothing in this Code section shall be construed to prevent an officer or employee of the State of Georgia or of any department, agency, bureau, authority, office, unit, or political subdivision thereof from advocating or attempting to influence public policy:

(1) As part of such person's official duties;

(2) When acting on personal time without using state resources; or

(3) When providing bona fide educational instruction about the federal Patient Protection and Affordable Care Act of 2010 in institutions of higher learning or otherwise.

(d) Nothing in this Code section shall be construed to preclude the state from participating in any MEDICAID program. (Code 1981, § 31-1-40, enacted by Ga. L. 2014, p. 243, § 1-2/HB 943.)

Effective date. — This Code section became effective April 15, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, "April 15, 2014," was substituted for "the effective date of this Code section" near the end of subsection (a).

Editor's notes. — Ga. L. 2014, p. 243, § 1-1/HB 943, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Health Care Freedom Act.'"

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 113 (2014). For article, "Georgia Health Care Freedom Act," see 31 Ga. St. U.L. Rev. 113 (2014).

For note, "A Compelling Interest? Using Old Conceptions of Public Health Law to Challenge the Affordable Care Act's Contraceptive Mandate," see 31 Ga. St. U.L. Rev. 613 (2015).

CHAPTER 2

DEPARTMENT OF COMMUNITY HEALTH

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31-2-4. Department's powers, duties, functions, and responsibilities; divisions; directors; contracts for health benefits.

(a)(1)(A) The Department of Community Health is re-created and established to perform the functions and assume the duties and powers exercised on June 30, 2009, by the Department of Community Health, the Division of Public Health of the Department of Human Resources, and the Office of Regulatory Services of the

Department of Human Resources, unless specifically transferred to the Department of Human Services, and such department, division, and office shall be reconstituted as the Department of Community Health effective July 1, 2009. The department shall retain powers and responsibility with respect to the expenditure of any funds appropriated to the department including, without being limited to, funds received by the state pursuant to the settlement of the lawsuit filed by the state against certain tobacco companies, *State of Georgia, et al. v. Philip Morris, Inc., et al.*, Civil Action #E-61692, V19/246 (Fulton County Superior Court, December 9, 1998).

(B) On and after July 1, 2011, the functions, duties, and powers of the Department of Community Health relating to the former Division of Public Health of the Department of Human Resources shall be performed and exercised by the Department of Public Health pursuant to Code Section 31-2A-2. No power, function, responsibility, duty, or similar authority held by the Department of Community Health as of June 30, 2009, shall be diminished or lost due to the creation of the Department of Public Health.

(2) The director of the Division of Public Health in office on June 30, 2009, and the director of the Office of Regulatory Services in office on June 30, 2009, shall become directors of the respective division or office which those predecessor agencies or units have become on and after July 1, 2009, and until such time as the commissioner appoints other directors of such divisions or units. The position of director of the Division of Public Health shall be abolished effective July 1, 2011.

(b) Reserved.

(c) The Board of Regents of the University System of Georgia is authorized to contract with the department for health benefits for members, employees, and retirees of the board of regents and the dependents of such members, employees, and retirees and for the administration of such health benefits. The department is also authorized to contract with the board of regents for such purposes.

(d) In addition to its other powers, duties, and functions, the department:

(1) Shall be the lead agency in coordinating and purchasing health care benefit plans for state and public employees, dependents, and retirees and may also coordinate with the board of regents for the purchase and administration of such health care benefit plans for its members, employees, dependents, and retirees;

(2) Is authorized to plan and coordinate medical education and physician work force issues;

(3) Shall investigate the lack of availability of health insurance coverage and the issues associated with the uninsured population of this state. In particular, the department is authorized to investigate the feasibility of creating and administering insurance programs for small businesses and political subdivisions of the state and to propose cost-effective solutions to reducing the numbers of uninsured in this state;

(4) Is authorized to appoint a health care work force policy advisory committee to oversee and coordinate work force planning activities;

(5) Is authorized to solicit and accept donations, contributions, and gifts and receive, hold, and use grants, devises, and bequests of real, personal, and mixed property on behalf of the state to enable the department to carry out its functions and purposes;

(6) Is authorized to award grants, as funds are available, to hospital authorities, hospitals, and medical-legal partnerships for public health purposes, pursuant to Code Sections 31-7-94 and 31-7-94.1 and paragraph (11) of this subsection;

(7) Shall make provision for meeting the cost of hospital care of persons eligible for public assistance to the extent that federal matching funds are available for such expenditures for hospital care. To accomplish this purpose, the department is authorized to pay from funds appropriated for such purposes the amount required under this paragraph into a trust fund account which shall be available for disbursement for the cost of hospital care of public assistance recipients. The commissioner, subject to the approval of the Office of Planning and Budget, on the basis of the funds appropriated in any year, shall estimate the scope of hospital care available to public assistance recipients and the approximate per capita cost of such care. Monthly payments into the trust fund for hospital care shall be made on behalf of each public assistance recipient and such payments shall be deemed encumbered for assistance payable. Ledger accounts reflecting payments into and out of the hospital care fund shall be maintained for each of the categories of public assistance established under Code Section 49-4-3. The balance of state funds in such trust fund for the payment of hospital costs in an amount not to exceed the amount of federal funds held in the trust fund by the department available for expenditure under this paragraph shall be deemed encumbered and held in trust for the payment of the costs of hospital care and shall be rebudgeted for this purpose on each quarterly budget required under the laws governing the expenditure of state funds. The state auditor shall audit the funds in the trust fund established under this paragraph in the same manner that any other funds disbursed by the department are audited;

(8) Shall classify and license community living arrangements in accordance with the rules and regulations promulgated by the department for the licensing and enforcement of licensing requirements for persons whose services are financially supported, in whole or in part, by funds authorized through the Department of Behavioral Health and Developmental Disabilities. To be eligible for licensing as a community living arrangement, the residence and services provided must be integrated within the local community. All community living arrangements licensed by the department shall be subject to the provisions of Code Sections 31-2-8 and 31-7-2.2. No person, business entity, corporation, or association, whether operated for profit or not for profit, may operate a community living arrangement without first obtaining a license or provisional license from the department. A license issued pursuant to this paragraph is not assignable or transferable. As used in this paragraph, the term "community living arrangement" means any residence, whether operated for profit or not, which undertakes through its ownership or management to provide or arrange for the provision of housing, food, one or more personal services, support, care, or treatment exclusively for two or more persons who are not related to the owner or administrator of the residence by blood or marriage;

(9) Shall establish, by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a schedule of fees for licensure activities for institutions and other health care related entities required to be licensed, permitted, registered, or commissioned by the department pursuant to Chapter 7, 13, 23, or 44 of this title, Chapter 5 of Title 26, paragraph (8) of this subsection, or Article 7 of Chapter 6 of Title 49. Such schedules shall be determined in a manner so as to help defray the costs incurred by the department, but in no event to exceed such costs, both direct and indirect, in providing such licensure activities. Such fees may be annually adjusted by the department but shall not be increased by more than the annual rate of inflation as measured by the Consumer Price Index, as reported by the Bureau of Labor Statistics of the United States Department of Labor. All fees paid thereunder shall be paid into the general funds of the State of Georgia. It is the intent of the General Assembly that the proceeds from all fees imposed pursuant to this paragraph be used to support and improve the quality of licensing services provided by the department;

(10)(A) May accept the certification or accreditation of an entity or program by a certification or accreditation body, in accordance with specific standards, as evidence of compliance by the entity or program with the substantially equivalent departmental requirements for issuance or renewal of a permit or provisional permit, provided that such certification or accreditation is established prior

to the issuance or renewal of such permits. The department may not require an additional departmental inspection of any entity or program whose certification or accreditation has been accepted by the department, except to the extent that such specific standards are less rigorous or less comprehensive than departmental requirements. Nothing in this Code section shall prohibit either departmental inspections for violations of such standards or requirements or the revocation of or refusal to issue or renew permits, as authorized by applicable law, or for violation of any other applicable law or regulation pursuant thereto.

(B) For purposes of this paragraph, the term:

(i) "Entity or program" means an agency, center, facility, institution, community living arrangement, drug abuse treatment and education program, or entity subject to regulation by the department under Chapters 7, 13, 22, 23, and 44 of this title; Chapter 5 of Title 26; paragraph (8) of this subsection; and Article 7 of Chapter 6 of Title 49.

(ii) "Permit" means any license, permit, registration, or commission issued by the department pursuant to the provisions of the law cited in division (i) of this subparagraph; and

(11)(A) Is authorized to approve medical-legal partnerships that comply with standards and guidelines established for such programs for purposes of determining eligibility for grants. The department shall seek input from legal services organizations, community health advocacy organizations, hospitals, diagnostic and treatment centers, and other primary and specialty health care providers in establishing such standards and guidelines.

(B) For purposes of this paragraph, the term "medical-legal partnership" means a program conducted or established by a nonprofit entity through a collaboration pursuant to a written agreement between one or more medical service providers and one or more legal services programs, including those based within a law school, to provide legal services without charge to assist income-eligible individuals and their families in resolving legal matters or other needs that have an impact on the health of such individuals and families. Written agreements may include a memorandum of understanding or other agreement relating to the operations of the partnership and encompassing the rights and responsibilities of each party thereto. The medical service provider or providers may provide referrals of its patients to the legal services program or programs on matters that may potentially impact the health, health care, or the health care costs of a patient.

(C) A medical-legal partnership that complies with the standards and guidelines established pursuant to this paragraph and

has demonstrated the ability and experience to provide high quality patient centered legal services regarding legal matters or other needs that have an impact on the health of individuals and families shall be approved by the department.

(D) This paragraph shall not be construed to require any medical-legal partnership or similar entity to seek or attain approval pursuant to this paragraph in order to operate. (Code 1981, § 31-5A-4, enacted by Ga. L. 1999, p. 296, § 1; Ga. L. 2001, p. 1240, § 1; Ga. L. 2002, p. 1132, § 1; Ga. L. 2002, p. 1324, § 1-4; Code 1981 § 31-2-4, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2010, p. 1014, § 1/HB 994; Ga. L. 2011, p. 705, § 4-2/HB 214; Ga. L. 2014, p. 397, § 1/SB 352.)

The 2014 amendment, effective July 1, 2014, in paragraph (d)(6), substituted "hospital authorities, hospitals, and medical-legal partnerships" for "hospital authorities and hospitals" and added "and paragraph (11) of this subsection"; deleted "and" at the end of paragraph (d)(9); added "and" at the end of division (d)(10)(B)(ii); and added paragraph (d)(11).

31-2-9. Records check requirement for certain health care facilities; definitions; use of information gathered in investigation; penalties for unauthorized release or disclosure; rules and regulations.

(a) As used in this Code section, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of the following offenses:

(A) A violation of Code Section 16-5-1;

(B) A violation of Code Section 16-5-21;

(C) A violation of Code Section 16-5-24;

(D) A violation of Code Section 16-5-70;

(E) A violation of Article 8 of Chapter 5 of Title 16;

(F) A violation of Code Section 16-6-1;

(G) A violation of Code Section 16-6-2;

(H) A violation of Code Section 16-6-4;

(I) A violation of Code Section 16-6-5;

(J) A violation of Code Section 16-6-5.1;

(K) A violation of Code Section 16-6-22.2;

(L) A violation of Code Section 16-8-41;

(M) A felony violation of Code Section 31-7-12.1;

(N) Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere; or

(O) Any other criminal offense as determined by the department and established by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," that would indicate the unfitness of an individual to provide care to or be in contact with persons residing in a facility.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Facility" means a:

(A) Personal care home required to be licensed or permitted under Code Section 31-7-12;

(B) Assisted living community required to be licensed under Code Section 31-7-12.2;

(C) Private home care provider required to be licensed under Article 13 of Chapter 7 of this title; or

(D) Community living arrangement subject to licensure under paragraph (8) of subsection (d) of Code Section 31-2-4.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(7) "License" means the document issued by the department to authorize the facility to operate.

(8) "Owner" means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in a facility providing care to persons under the license of the facility in this state and who:

(A) Purports to or exercises authority of the owner in a facility;

(B) Applies to operate or operates a facility;

(C) Maintains an office on the premises of a facility;

(D) Resides at a facility;

(E) Has direct access to persons receiving care at a facility;

(F) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction during the time such facility services are being provided; or

(G) Enters into a contract to acquire ownership of a facility.

(9) "Records check application" means fingerprints in such form and of such quality as prescribed by the Georgia Crime Information Center and under standards adopted by the Federal Bureau of Investigation and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining criminal background information pursuant to this Code section.

(b) An owner with a criminal record shall not operate or hold a license to operate a facility, and the department shall revoke the license of any owner operating a facility or refuse to issue a license to any owner operating a facility if it determines that such owner has a criminal record; provided, however, that an owner who holds a license to operate a facility on or before June 30, 2007, shall not have his or her license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c)(1) Prior to approving any license for a new facility and periodically as established by the department by rule and regulation, the department shall require an owner to submit a records check application. The department shall establish a uniform method of obtaining an owner's records check application.

(2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph, the department shall transmit to the GCIC the fingerprints and records search fee from each fingerprint records check application in accordance with Code Section 35-3-35. Upon receipt thereof, the GCIC shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search of bureau

records and an appropriate report and shall promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to the GCIC and the fee, the GCIC shall notify the department in writing of any criminal record or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a determination about an owner's criminal record and shall notify the owner in writing as to the department's determination as to whether the owner has or does not have a criminal record.

(B) The department may either perform criminal background checks under agreement with the GCIC or contract with the GCIC and appropriate law enforcement agencies which have access to GCIC and Federal Bureau of Investigation information to have those agencies perform for the department criminal background checks for owners. The department or the appropriate law enforcement agencies may charge reasonable fees for performing criminal background checks.

(3)(A) The department's determination regarding an owner's criminal record, or any action by the department revoking or refusing to grant a license based on such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department.

(B) In a hearing held pursuant to subparagraph (A) of this paragraph or subsection (b) of this Code section, the hearing officer shall consider in mitigation the length of time since the crime was committed, the absence of additional criminal charges, the circumstances surrounding the commission of the crime, other indicia of rehabilitation, the facility's history of compliance with the regulations, and the owner's involvement with the licensed facility in arriving at a decision as to whether the criminal record requires the denial or revocation of the license to operate the facility. Where a hearing is required, at least 30 days prior to such hearing, the hearing officer shall notify the office of the prosecuting attorney who initiated the prosecution of the crime in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license as contemplated within this Code section. If objections are made, the hearing officer shall take such objections into consideration in considering the case.

(4) Neither the GCIC, the department, any law enforcement agency, nor the employees of any such entities shall be responsible for

the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this Code section.

(d) All information received from the Federal Bureau of Investigation or the GCIC shall be for the exclusive purpose of approving or denying the granting of a license to a new facility or the revision of a license of an existing facility when a new owner is proposed and shall not be released or otherwise disclosed to any other person or agency. All such information collected by the department shall be maintained by the department pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable. Penalties for the unauthorized release or disclosure of any such information shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable.

(e) The requirements of this Code section are supplemental to any requirements for a license imposed by Article 3 of Chapter 5 of Title 49 or Article 11 of Chapter 7 of this title.

(f) The department shall promulgate written rules and regulations to implement the provisions of this Code section. (Code 1981, § 31-2-14, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2010, p. 878, § 31/HB 1387; Ga. L. 2011, p. 227, § 10/SB 178; Code 1981, § 31-2-9, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214; Ga. L. 2012, p. 351, § 2/HB 1110; Ga. L. 2013, p. 524, § 3-2/HB 78; Ga. L. 2014, p. 444, § 2-8/HB 271; Ga. L. 2015, p. 598, § 1-8/HB 72.)

The 2013 amendment, effective July 1, 2013, rewrote subparagraph (a)(2)(E); substituted "or" for ", relating to armed robbery" at the end of subparagraph (a)(2)(L); deleted former subparagraph (a)(2)(M), which read: "A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person;"; and redesignated former subparagraph (a)(2)(N) as present subparagraph (a)(2)(M).

The 2014 amendment, effective July 1, 2014, deleted ", relating to murder and felony murder" following "Code Section 16-5-1" at the end of subparagraph (a)(2)(A).

The 2015 amendment, effective July 1, 2015, deleted ", relating to aggravated assault" following "Code Section 16-5-21" in subparagraph (a)(2)(B); deleted ", relating to aggravated battery" following "Code Section 16-5-24" in subparagraph (a)(2)(C); deleted ", relating to cruelty to children" following "Code Section 16-5-70" in subparagraph (a)(2)(D); deleted ", relating to rape" following "Code Section 16-6-1" in subparagraph (a)(2)(F); deleted ", relating to aggravated sodomy" following "Code Section 16-6-2" in subparagraph (a)(2)(G); deleted ", relating to child molestation" following "Code Section 16-6-4" in subparagraph (a)(2)(H); deleted ", relating to enticing a child for indecent purposes" following "Code Section 16-6-5" in subparagraph (a)(2)(I); deleted ", relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions" following "Code Section 16-6-5.1" in subparagraph (a)(2)(J); deleted ", relating to aggravated sexual battery" following "Code Section 16-6-22.2" in subparagraph (a)(2)(K); added present subparagraph (a)(2)(M); and redesignated former subparagraphs

(a)(2)(M) and (a)(2)(N) as present subparagraphs (a)(2)(N) and (a)(2)(O), respectively.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, "or" was deleted at the end of subparagraph (a)(2)(L); "; or" was substituted for a period at the end of subparagaraph (a)(2)(M); and subparagraph (a)(2)(O) was redesignated as subparagraph (a)(2)(N).

31-2-12. Pilot program to provide coverage for bariatric surgical procedures for treatment of obesity and related conditions; definitions; eligibility; requirements; evaluation report on two-year pilot program.

(a) As used in this Code section, the term "state health insurance plan" means:

(1) The state employees' health insurance plan established pursuant to Article 1 of Chapter 18 of Title 45;

(2) The health insurance plan for public school teachers established pursuant to Subpart 2 of Part 6 of Article 17 of Chapter 2 of Title 20; and

(3) The health insurance plan for public school employees established pursuant to Subpart 3 of Part 6 of Article 17 of Chapter 2 of Title 20.

(b) Beginning six months after the effective date of this Code section, the department shall conduct a two-year pilot program to provide coverage for the treatment and management of obesity and related conditions under a state health insurance plan. The pilot program will provide benefits for medically necessary bariatric procedures for participants selected for inclusion in the pilot program.

(c) Participation in the pilot program shall be limited to no more than 75 individuals per year, to be selected in a manner determined by the department. Any person who has elected coverage under a state health insurance plan shall be eligible to be selected to participate in the pilot program in accordance with criteria established by the department which shall include, but not be limited to:

(1) Participation in a state health insurance plan for at least 12 months;

(2) Completion of a health risk assessment through a state health insurance plan;

(3) A body mass index of:

(A) Greater than 40; or

(B) Greater than 35 with one or more co-morbidities such as diabetes, hypertension, gastro-esophageal reflux disease, sleep apnea, or asthma;

(4) Consent to provide personal and medical information to a state health insurance plan;

(5) Non-tobacco user;

(6) No other primary group health coverage or primary coverage with Medicare; and

(7) Must have been covered under a state health insurance plan for two years immediately prior to the pilot program and must express an intent to continue coverage under such state health insurance plan for two years following the approved surgical procedure date.

(d) Eligible individuals must apply to participate in the pilot program. The individual and his or her physician shall complete and submit an obesity treatment program application to the department no later than February 1 for each year of the pilot program. The department's contracted health insurance carrier shall review the criteria contained in subsection (c) of this Code section to determine qualified applicants for the pilot program.

(e) The selected participants shall be eligible to receive a multi-disciplinary health evaluation at a facility located within the State of Georgia which is designated by the American Society for Metabolic and Bariatric Surgery as a Bariatric Surgery Center of Excellence. The bariatric surgical procedures covered in the pilot program are:

(1) Gastric band;

(2) Laparoscopic sleeve gastrectomy; and

(3) Rouen-Y gastric bypass.

The participants shall use the department's contracted health insurance carrier to enroll in a case management program and to receive prior authorization for a surgical procedure provided pursuant to the pilot program. The health insurance carrier shall provide case management and patient follow-up services. Benefits for a bariatric surgical procedure under the pilot program shall be provided only when the surgical procedure is performed at a Center of Excellence within the State of Georgia.

(f) All health care services provided pursuant to the pilot program shall be subject to the health insurance carrier's plan of benefits and policy provisions. Complications that arise after the discharge date are subject to the health insurance carrier's plan of benefits and policy provisions.

(g) Participants must agree to comply with any and all terms and conditions of the pilot program including, but not limited to, participa-

tion and reporting requirements. Participation requirements shall include a 12 month postsurgery case management program. Each participant must also agree to comply with any and all requests by the department for postsurgical medical and productivity information, and such agreement shall survive his or her participation in a state health insurance plan.

(h) A panel shall review the results and outcomes of the pilot program beginning six months after program initiation and shall conduct subsequent reviews every six months for the remainder of the pilot program. The panel shall be composed of the following members, appointed by the Governor:

(1) A representative of a state health insurance plan;

(2) A representative of the state contracted health insurance carrier or carriers providing coverage under the pilot program; and

(3) At least two physicians who carry a certification by the American Society for Metabolic and Bariatric Surgery.

(i) The department shall provide a final report by December 15 of the last year of the pilot program to the chairpersons of the House Committee on Health and Human Services, the Senate Health and Human Services Committee, the House Committee on Appropriations, and the Senate Appropriations Committee. The report shall include, at a minimum:

(1) Whether patients in the pilot have experienced:

(A) A reduction in body mass index, and if so, the average amount of reduction; or

(B) The reduction or elimination of co-morbidities, and if so, which co-morbidities were reduced or eliminated;

(2) The total number of individuals who applied to participate in the pilot program;

(3) The total number of participants who enrolled in the pilot program;

(4) The average cost of each procedure conducted under the pilot program, including gastric band, laparoscopic sleeve gastrectomy, and Rouen-Y gastric bypass;

(5) The total cost of each participant's annual health care costs prior to the surgical procedure and for each of the subsequent post-procedure years for the three years following the surgical procedure; and

(6) The percentage of participants still employed by the state 12 months following the surgical procedure and 24 months following the surgical procedure, respectively.

(j) This Code section shall stand repealed 42 months after the effective date of such Code section. (Code 1981, § 31-2-12, enacted by Ga. L. 2014, p. 172, § 1/HB 511.)

Effective date. — This Code section became effective July 1, 2015.

Editor's notes. — Ga. L. 2014, p. 172, § 2/HB 511, not codified by the General Assembly, provided that this Code section shall become effective only upon the effective date of a specific appropriation of funds for purposes of this Act as expressed in a line item making specific reference to such Act in a General Appropriations Act enacted by the General Assembly. Funds were appropriated at the 2015 session of the General Assembly.

This Code section formerly pertained to standards for sewage management systems and was redesignated as Code Section 31-2A-11 by Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011.

31-2-13. Inspection warrant.

(a) As used in this Code section, the term "commissioner" means the commissioner of community health or his or her designee.

(b) Nothing in this Code section shall be construed to require an inspection warrant when a warrantless inspection is authorized by law or pursuant to a rule or regulation enacted pursuant to this title.

(c) An inspection warrant is an order, in writing, signed by a judicial officer, directed to the commissioner or any person authorized to make inspections for such commissioner and commanding him or her to conduct an inspection required or authorized by:

(1) This title;

(2) Any other law administered by the commissioner;

(3) Rules or regulations promulgated pursuant to this title; or

(4) Rules or regulations promulgated pursuant to any other law administered by the commissioner.

(d) The commissioner or any person authorized to make inspections for such commissioner shall make application for an inspection warrant to a person who is a judicial officer within the meaning of Code Section 17-5-21.

(e)(1) An inspection warrant shall be issued only upon cause and when supported by an affidavit which:

(A) Particularly describes the place, dwelling, structure, premises, or vehicle to be inspected;

(B) Particularly describes the purpose for which the inspection is to be made; and

(C) Contains either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent.

(2) Cause to support the issuance of an inspection warrant shall be deemed to exist if:

(A) Reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle; or

(B) There is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.

(f) An inspection warrant shall be effective for the time specified therein, but not for a period of more than 14 days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon satisfaction that such extension or renewal is in the public interest. Such inspection warrant shall be executed and returned to the judicial officer by whom it was issued within the time specified in such warrant or within the extended or renewed time. After the expiration of such time, the inspection warrant, unless executed, shall be void.

(g) An inspection pursuant to an inspection warrant:

(1) May be executed at any time as deemed appropriate by the individual executing such warrant but whenever possible shall be made at any time during operating or regular business hours;

(2) Should not be performed in the absence of an owner or occupant of the particular place, dwelling, structure, premises, or vehicle being inspected unless specifically authorized by the judicial officer upon a showing that such authority is reasonably necessary to effectuate the purpose of the law, rule, or regulation being enforced; and

(3) Shall not be made by means of forcible entry, except that the judicial officer may expressly authorize a forcible entry when facts are shown:

(A) Which are sufficient to create a reasonable suspicion of a violation of this title or any other law, rule, or regulation administered by the commissioner or the department, which, if such violation existed, would be an immediate threat to health or safety; or

(B) Establishing that a reasonable attempt to serve a previous inspection warrant has been unsuccessful.

(h) When prior consent for an inspection has been sought and refused and an investigation warrant has been issued, an inspection warrant may be executed without further notice to the owner or occupant of the particular place, dwelling, structure, premises, or vehicle being inspected.

(i) It shall be unlawful for any owner, operator, or employee of the particular place, dwelling, structure, premises, or vehicle being inspected to refuse to allow an inspection pursuant to an inspection warrant issued as provided in this Code section. Any person violating this Code section shall be guilty of a misdemeanor. (Code 1981, § 31-2-13, enacted by Ga. L. 2015, p. 598, § 1-9/HB 72.)

Effective date. — This Code section became effective July 1, 2015.

CHAPTER 2A

DEPARTMENT OF PUBLIC HEALTH

Sec.
31-2A-4. Obligation to safeguard and promote health of people of the state.
31-2A-12. Rules and regulations governing operation of land disposal sites for septic tank waste from one business [Repealed].
31-2A-16. Maternal Mortality Review Committee established.
31-2A-17. Alzheimer's Disease Registry established; purpose; procedures; rules and regulations; confidentiality of data.
31-2A-18. Establishment of the Low THC Oil Patient Registry; definitions; purpose; registration cards; quarterly reports; waiver forms.

31-2A-4. Obligation to safeguard and promote health of people of the state.

The Department of Public Health shall safeguard and promote the health of the people of this state and is empowered to employ all legal means appropriate to that end. Illustrating, without limiting, the foregoing grant of authority, the department is empowered to:

(1) Provide epidemiological investigations and laboratory facilities and services in the detection and control of disease, disorders, and disabilities and to provide research, conduct investigations, and disseminate information concerning reduction in the incidence and proper control of disease, disorders, and disabilities;

(2) Forestall and correct physical, chemical, and biological conditions that, if left to run their course, could be injurious to health;

(3) Regulate and require the use of sanitary facilities at construction sites and places of public assembly and to regulate persons, firms, and corporations engaged in the rental and service of portable chemical toilets;

(4) Isolate and treat persons afflicted with a communicable disease who are either unable or unwilling to observe the department's rules

and regulations for the suppression of such disease and to establish, to that end, complete or modified quarantine, surveillance, or isolation of persons and animals exposed to a disease communicable to man;

(5) Procure and distribute drugs and biologicals and purchase services from clinics, laboratories, hospitals, and other health facilities and, when authorized by law, to acquire and operate such facilities;

(6) Cooperate with agencies and departments of the federal government and of the state by supplying consultant services in medical and hospital programs and in the health aspects of civil defense, emergency preparedness, and emergency response;

(7) Prevent, detect, and relieve physical defects and deformities;

(8) Promote the prevention, early detection, and control of problems affecting the dental and oral health of the citizens of Georgia;

(9) Contract with county boards of health to assist in the performance of services incumbent upon them under Chapter 3 of this title and, in the event of grave emergencies of more than local peril, to employ whatever means may be at its disposal to overcome such emergencies;

(10) Contract and execute releases for assistance in the performance of its functions and the exercise of its powers and to supply services which are within its purview to perform;

(11) Enter into or upon public or private property at reasonable times for the purpose of inspecting same to determine the presence of disease and conditions deleterious to health or to determine compliance with health laws and rules, regulations, and standards thereunder;

(12) Establish, by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a schedule of fees for laboratory services provided, schedules to be determined in a manner so as to help defray the costs incurred by the department, but in no event to exceed such costs, both direct and indirect, in providing such laboratory services, provided no person shall be denied services on the basis of his or her inability to pay. All fees paid thereunder shall be paid into the general funds of the State of Georgia. The individual who requests the services authorized in this paragraph, or the individual for whom the laboratory services authorized in this paragraph are performed, shall be responsible for payment of the service fees. As used in this paragraph, the term "individual" means a natural person or his or her responsible health benefit policy or Title XVIII, XIX, or XXI of the federal Social Security Act of 1935;

(13) Exchange data with the Department of Community Health for purposes of health improvement and fraud prevention for programs operated by the Department of Community Health pursuant to mutually agreed upon data sharing agreements and in accordance with federal confidentiality laws relating to health care; and

(14) Provide The Council of Superior Court Clerks of Georgia the data set forth in Code Section 15-12-40.1, without charge and in the electronic format requested. (Code 1981, § 31-2A-4, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214; Ga. L. 2014, p. 451, § 10/HB 776.)

The 2014 amendment, effective July 1, 2014, deleted "and" at the end of paragraph (12); substituted "; and" for a period at the end of paragraph (13); and added paragraph (14).

31-2A-12. Rules and regulations governing operation of land disposal sites for septic tank waste from one business.

Repealed by Ga. L. 2012, p. 843, § 1B/HB 1102, effective July 1, 2014.

Editor's notes. — This Code section was based on Code 1981, § 31-2-8, enacted by Ga. L. 2002, p. 927, § 6A; Ga. L. 2007, p. 127, § 5/HB 463; Code 1981, § 31-2-13, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-12, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214; Ga. L. 2012, p. 843, § 1B/HB 1102 and was repealed by its own terms effective July 1, 2014.

31-2A-14. Georgia Diabetes Control Grant Program; advisory committee; administration of authorized grant programs; grant criteria.

Editor's notes. — Pursuant to the terms of subsection (f), funds were not appropriated at the 2010, 2011, 2012, 2013, 2014, or 2015 sessions of the General Assembly.

31-2A-16. Maternal Mortality Review Committee established.

(a) The General Assembly finds that:

(1) Georgia currently ranks fiftieth in maternal deaths in the United States;

(2) Maternal deaths are a serious public health concern and have a tremendous family and societal impact;

(3) Maternal deaths are significantly underestimated and inadequately documented, preventing efforts to identify and reduce or eliminate the causes of death;

(4) No processes exist in this state for the confidential identification, investigation, or dissemination of findings regarding maternal deaths;

(5) The federal Centers for Disease Control and Prevention has determined that maternal deaths should be investigated through state based maternal mortality reviews in order to institute the systemic changes needed to decrease maternal mortality; and

(6) There is a need to establish a program to review maternal deaths and to develop strategies for the prevention of maternal deaths in Georgia.

(b) The Department of Public Health shall establish a Maternal Mortality Review Committee to review maternal deaths and to develop strategies for the prevention of maternal deaths. The committee shall be multidisciplinary and composed of members as deemed appropriate by the department. The department may contract with an external organization to assist in collecting, analyzing, and disseminating maternal mortality information, organizing and convening meetings of the committee, and other tasks as may be incident to these activities, including providing the necessary data, information, and resources to ensure successful completion of the ongoing review required by this Code section.

(c) The committee shall:

(1) Identify maternal death cases;

(2) Review medical records and other relevant data;

(3) Contact family members and other affected or involved persons to collect additional relevant data;

(4) Consult with relevant experts to evaluate the records and data;

(5) Make determinations regarding the preventability of maternal deaths;

(6) Develop recommendations for the prevention of maternal deaths; and

(7) Disseminate findings and recommendations to policy makers, health care providers, health care facilities, and the general public.

(d)(1) Health care providers licensed pursuant to Title 43, health care facilities licensed pursuant to Chapter 7 of Title 31, and pharmacies licensed pursuant to Chapter 4 of Title 26 shall provide reasonable access to the committee to all relevant medical records associated with a case under review by the committee.

(2) A health care provider, health care facility, or pharmacy providing access to medical records pursuant to this Code section shall not be held liable for civil damages or be subject to any criminal or disciplinary action for good faith efforts in providing such records.

(e)(1) Information, records, reports, statements, notes, memoranda, or other data collected pursuant to this Code section shall not be admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency, or person. Such information, records, reports, statements, notes, memoranda, or other data shall not be exhibited nor their contents disclosed in any way, in whole or in part, by any officer or representative of the department or any other person, except as may be necessary for the purpose of furthering the review of the committee of the case to which they relate. No person participating in such review shall disclose, in any manner, the information so obtained except in strict conformity with such review project.

(2) All information, records of interviews, written reports, statements, notes, memoranda, or other data obtained by the department, the committee, and other persons, agencies, or organizations so authorized by the department pursuant to this Code section shall be confidential.

(f)(1) All proceedings and activities of the committee under this Code section, opinions of members of such committee formed as a result of such proceedings and activities, and records obtained, created, or maintained pursuant to this Code section, including records of interviews, written reports, and statements procured by the department or any other person, agency, or organization acting jointly or under contract with the department in connection with the requirements of this Code section, shall be confidential and shall not be subject to Chapter 14 of Title 50, relating to open meetings, or Article 4 of Chapter 18 of Title 50, relating to open records, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding; provided, however, that nothing in this Code section shall be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the committee's proceedings.

(2) Members of the committee shall not be questioned in any civil or criminal proceeding regarding the information presented in or opinions formed as a result of a meeting or communication of the committee; provided, however, that nothing in this Code section shall be construed to prevent a member of the committee from testifying to information obtained independently of the committee or which is public information.

(g) Reports of aggregated nonindividually identifiable data shall be compiled on a routine basis for distribution in an effort to further study the causes and problems associated with maternal deaths. Reports shall be distributed to the General Assembly, health care providers and

facilities, key government agencies, and others necessary to reduce the maternal death rate. (Code 1981, § 31-2A-16, enacted by Ga. L. 2014, p. 337, § 1/SB 273.)

Effective date. — This Code section became effective July 1, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 31-2A-16, as enacted by Ga. L. 2014, p. 822, § 1/HB 966, was redesignated as Code Section 31-2A-17.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

31-2A-17. Alzheimer's Disease Registry established; purpose; procedures; rules and regulations; confidentiality of data.

(a) There is established within the Department of Public Health the Alzheimer's Disease Registry.

(b) The purpose of the registry shall be to assist in the development of public policy and planning relative to Alzheimer's disease and related disorders. The registry shall provide a central data base of individuals with Alzheimer's disease or related disorders.

(c) The department shall establish procedures and promulgate rules and regulations for the establishment and operation of the registry. Such procedures, rules, and regulations shall provide for:

(1) Collecting and evaluating data regarding the prevalence of Alzheimer's disease and related disorders in Georgia, including who shall report the data to the registry;

(2) Determining what information shall be maintained in the registry and the length of time such data shall be available;

(3) Sharing of data for policy planning purposes;

(4) Disclosing nonidentifying data to support Alzheimer's and related disorder research;

(5) The methodology by which families and physicians of persons who are reported to the registry shall be contacted to gather additional data; and

(6) Information about public and private resources.

(d) The collected data in the registry shall be confidential, and all persons to whom the data is released shall maintain patient confidentiality. No publication of information, biotechnical research, or medical data shall be made that identifies any patient by name. The registry shall be established and regulated pursuant to the requirements of 42 U.S.C. Section 1301, et seq., and P.L. 104-191, the federal Health Insurance Portability and Accountability Act of 1996. (Code 1981, § 31-2A-17, enacted by Ga. L. 2014, p. 822, § 1/HB 966.)

Effective date. — This Code section became effective July 1, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 31-2A-16, as enacted by Ga. L. 2014, p. 822, § 1/HB 966, was redesignated as Code Section 31-2A-17.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014). For article on the 2014 enactment of this Code section, see 31 Ga. St. U.L. Rev. 129 (2014).

31-2A-18. Establishment of the Low THC Oil Patient Registry; definitions; purpose; registration cards; quarterly reports; waiver forms.

(a) As used in this Code section, the term:

(1) "Board" means the Georgia Composite Medical Board.

(2) "Caregiver" means the parent, guardian, or legal custodian of an individual who is less than 18 years of age or the legal guardian of an adult.

(3) "Condition" means:

(A) Cancer, when such diagnosis is end stage or the treatment produces related wasting illness, recalcitrant nausea and vomiting;

(B) Amyotrophic lateral sclerosis, when such diagnosis is severe or end stage;

(C) Seizure disorders related to diagnosis of epilepsy or trauma related head injuries;

(D) Multiple sclerosis, when such diagnosis is severe or end stage;

(E) Crohn's disease;

(F) Mitochondrial disease;

(G) Parkinson's disease, when such diagnosis is severe or end stage; or

(H) Sickle cell disease, when such diagnosis is severe or end stage.

(4) "Department" means the Department of Public Health.

(5) "Low THC oil" shall have the same meaning as set forth in Code Section 16-12-190.

(6) "Physician" means an individual licensed to practice medicine pursuant to Article 2 of Chapter 34 of Title 43.

(7) "Registry" means the Low THC Oil Patient Registry.

(b) There is established within the department the Low THC Oil Patient Registry.

(c) The purpose of the registry is to provide a registration of individuals and caregivers who have been issued registration cards. The department shall establish procedures and promulgate rules and regulations for the establishment and operation of the registration process and dispensing of registry cards to individuals and caregivers. Only individuals residing in this state for at least one year or a child born in this state less than one year old shall be eligible for registration under this Code section. Nothing in this Code section shall apply to any Georgia residents living temporarily in another state for the purpose of securing THC oil for treatment of any condition under this Code section.

(d) The department shall issue a registration card to individuals and caregivers as soon as practicable but no later than September 1, 2015, when an individual has been certified to the department by his or her physician as being diagnosed with a condition and has been authorized by such physician to use low THC oil as treatment for such condition. The board shall establish procedures and promulgate rules and regulations to assist physicians in providing required uniform information relating to certification and any other matter relating to the issuance of certifications. In promulgating such rules and regulations, the board shall require that physicians have a doctor-patient relationship when certifying an individual as needing low THC oil and physicians shall be required to be treating an individual for the specific condition requiring such treatment.

(e) The board shall require physicians to issue quarterly reports to the board. Such reports shall require physicians to provide information, including, but not limited to, dosages recommended for a particular condition, clinical responses, compliance, responses to treatment, side effects, and drug interactions.

(f) Information received and records kept by the department for purposes of administering this Code section shall be confidential; provided, however, that such information shall be disclosed:

(1) Upon written request of an individual or caregiver registered pursuant to this Code section; and

(2) To peace officers and prosecuting attorneys for the purpose of:

(A) Verifying that an individual in possession of a registration card is registered pursuant to this Code section; or

(B) Determining that an individual in possession of low THC oil is registered pursuant to this Code section.

(g) The board shall develop a waiver form that will advise that the use of cannabinoids and THC containing products have not been approved by the FDA and the clinical benefits are unknown and may

cause harm. Any patient or caregiver shall sign such waiver prior to his or her approval for registration. (Code 1981, § 31-2A-18, enacted by Ga. L. 2015, p. 49, § 2-1/HB 1.)

Effective date. — This Code section became effective April 16, 2015.

Editor's notes. — Ga. L. 2015, p. 49, § 1-1/HB 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Haleigh's Hope Act.'"

CHAPTER 5

ADMINISTRATION AND ENFORCEMENT

Article 1

General Provisions

Sec.

31-5-10. Notifying department or board of health of conditions on private property which are injurious to the public; inspection warrant; notice to owner and occupant; abatement.

Article 2

Inspection Warrants

Sec.

31-5-20. "Inspection warrant" defined.
31-5-21. Persons who may obtain inspection warrants; authorization of searches and inspections of property.
31-5-24. Exclusion of evidence obtained [Repealed].

ARTICLE 1

GENERAL PROVISIONS

31-5-10. Notifying department or board of health of conditions on private property which are injurious to the public; inspection warrant; notice to owner and occupant; abatement.

(a) The provisions of this Code section shall apply only in those counties of this state having a population of 450,000 or more according to the United States decennial census of 1980 or any future such census.

(b) Any person who knows or suspects that a condition exists on private property, which condition is injurious to the public health, safety, or comfort, shall immediately notify the Department of Public Health or the county board of health. Upon receiving such notice, the department or the county board of health shall be authorized to obtain an inspection warrant as provided in Code Section 31-5-21. If the department or the county board of health determines that there exists a condition which is injurious to the public health, safety, or comfort, the department or county board of health shall, by registered or

certified mail or statutory overnight delivery with return receipt requested, notify the occupants of the property and, if different from the occupant, the person, firm, or corporation which owns the property. Notice to the owner shall be sent to the address shown on the county or municipal property tax records.

(c) If the department or the county board of health brings an action for injunction to abate a public nuisance which is injurious to the public health, safety, or comfort, process shall be served on the occupants of the property and on any person, firm, or corporation having any interest in the property according to the county property records. Service shall be made in accordance with Code Section 9-11-4; and, if any person, firm, or corporation to be served resides outside the state, has departed the state, cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, the judge or clerk may make an order that the service be made by publication of summons as provided in Code Section 9-11-4.

(d) In addition to any form of relief ordered by the court, the superior court may, as a part of its order, authorize the department or the county board of health to take appropriate action to abate such public nuisance. Any cost incurred by the department or the county board of health to abate such nuisance shall constitute a lien against the property, and such lien shall have the same status and priority as a lien for taxes. (Code 1981, § 31-5-10, enacted by Ga. L. 1985, p. 388, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2015, p. 598, § 1-10/HB 72.)

The 2015 amendment, effective July 1, 2015, substituted "Department of Public Health" for "department" in the first sentence of subsection (b).

ARTICLE 2

INSPECTION WARRANTS

31-5-20. "Inspection warrant" defined.

As used in this article, the term "inspection warrant" means a warrant authorizing a search or inspection of private property where such a search or inspection is one that is necessary for the enforcement of any of the provisions of laws authorizing licensure, inspection, or regulation by the Department of Public Health or a local agency thereof. (Code 1933, § 88-301A, enacted by Ga. L. 1975, p. 693, § 1; Ga. L. 1982, p. 1667, §§ 1, 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 5-11/HB 214; Ga. L. 2015, p. 598, § 1-11/HB 72.)

The 2015 amendment, effective July 1, 2015, in this Code section, substituted "article" for "chapter" near the beginning, and deleted "or by the Department of Community Health" following "agency thereof" at the end.

31-5-21. Persons who may obtain inspection warrants; authorization of searches and inspections of property.

The commissioner of public health or his or her delegate or the director of any county board of health, in addition to other procedures now or hereafter provided, may obtain an inspection warrant under the conditions specified in this chapter. Such warrant shall authorize the commissioner of public health or the director of any county board of health, or the agents of any, or the Department of Agriculture, as appropriate, to conduct a search or inspection of property, either with or without the consent of the person whose property is to be searched or inspected, if such search or inspection is one that is elsewhere authorized under the rules and regulations duly promulgated under this title or any provision of law which authorizes licensure, inspection, or regulation by the Department of Public Health or a local agency thereof. (Code 1933, § 88-302A, enacted by Ga. L. 1975, p. 693, § 1; Ga. L. 1982, p. 1667, §§ 1, 2; Ga. L. 1998, p. 128, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 5-12/HB 214; Ga. L. 2015, p. 598, § 1-12/HB 72.)

The 2015 amendment, effective July 1, 2015, in this Code section, substituted "of public health" for "or the commissioner of community health" in the first and second sentences, and deleted "or by the Department of Community Health" following "agency thereof" in the last sentence.

31-5-24. Exclusion of evidence obtained.

Repealed by Ga. L. 2015, p. 598, § 1-13/HB 72, effective July 1, 2015.

Editor's notes. — This Code section was based on Code 1933, § 88-306A, enacted by Ga. L. 1975, p. 693, § 1.

CHAPTER 6

STATE HEALTH PLANNING AND DEVELOPMENT

Cross references. — Offering continuing care when resident purchases resident owned living unit, § 33-45-7.1.

ARTICLE 1

GENERAL PROVISIONS

31-6-2. Definitions.

JUDICIAL DECISIONS

Certificate of need.

Ga. Comp. R. Regs. 111-2-2-.40, which provided that an ambulatory surgical center (ASC) that was part of a hospital was not subject to more stringent certificate of need (CON) specifications, was not unconstitutionally vague because it stated two clear examples of when an ASC was part of a hospital and provided that other situations would be considered under case-by-case review by the Department of Community Health. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 295 Ga. 446, 761 S.E.2d 74 (2014).

ARTICLE 2

ORGANIZATION

31-6-21.1. Procedures for rule making by Department of Community Health.

JUDICIAL DECISIONS

Definition of "part of a hospital" not unconstitutionally vague. — Ga. Comp. R. Regs. 111-2-2-.40, which provided that an ambulatory surgical center (ASC) that was part of a hospital was not subject to more stringent certificate of need (CON) specifications, was not unconstitutionally vague because it stated two clear examples of when an ASC was part of a hospital and provided that other situations would be considered under a case-by-case review by the Department of Community Health. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 295 Ga. 446, 761 S.E.2d 74 (2014).

ARTICLE 3

CERTIFICATE OF NEED PROGRAM

31-6-40. Certificate of need required for new institutional health services; exemption.

JUDICIAL DECISIONS

Exhaustion of administrative remedies.

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community Health (DCH) issued to ambulatory surgery centers (ASC) sought information beyond the scope of O.C.G.A. § 31-6-70. Furthermore, the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were

available to ACSs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ACSs. Ga. Soc'y of Ambulatory Surgery Ctrs. v. Ga. Dep't of Cmty. Health, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-40.1. Acquisition of health care facilities; penalty for failure to notify the department; limitation on applications; agreement to care for indigent patients; requirements for destination cancer hospitals; notice and hearing provisions for penalties authorized under this Code section.

JUDICIAL DECISIONS

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-40.2. New perinatal services.

JUDICIAL DECISIONS

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-42. Qualifications for issuance of certificate.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

JUDICIAL DECISIONS

Definition of "part of a hospital" not unconsitutionally vague. — Ga. Comp. R. Regs. 111-2-2-.40, which provided that an ambulatory surgical center (ASC) that was part of a hospital was not subject to more stringent certificate of need (CON) specifications, was not unconstitutionally vague because it stated two clear examples of when an ASC was part of a hospital and provided that other situations would be considered under a case-by-case review by the Department of Community Health. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 295 Ga. 446, 761 S.E.2d 74 (2014).

31-6-44. Certificate of Need Appeal Panel.

JUDICIAL DECISIONS

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-44.1. Judicial review.

Law reviews. — For annual survey on administrative law, see 65 Mercer L. Rev. 41 (2013).

JUDICIAL DECISIONS

Construction. — Georgia Court of Appeals finds that the Georgia legislature uses the term "jurisdiction" under O.C.G.A. § 31-6-44.1(c) with regard to attorney fees because the legislature intends to refer to something other than a challenge asserting that the Georgia Department of Community Health (DCH) exceeded the department's statutory authority or acted ultra vires in issuing a particular decision with regard to a Certificate of Need; rather, the Court of Appeals concludes that the legislature intends the second exception to encompass challenges to the DCH's jurisdiction as a whole. Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

Georgia Court of Appeals concludes that the Georgia legislature uses the term "jurisdiction" in O.C.G.A. § 31-6-44.1(c) to refer to the Georgia Department of Community Health's general power to act and not to the department's authority to act with regard to a particular Certificate of Need. Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

Application. — Trial court erred by denying a health system's motion for attorney fees pursuant to O.C.G.A. § 31-6-44.1(c) with regard to its successful defense to a certificate of need challenge determination of the Georgia Department of Community Health (DCH) because the challenging hospital did not assert a jurisdictional challenge to the DCH's determination, thus, the challenge did not fall into the exception to fees under § 31-6-44.1(c). Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-45. Revocation of certificate of need; enforcement of chapter; regulatory investigations and examinations.

JUDICIAL DECISIONS

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-47. Exemptions from chapter.

JUDICIAL DECISIONS

Exhaustion of administrative remedies.

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community Health (DCH) issued to ambulatory surgery centers (ASC) sought information beyond the scope of O.C.G.A. § 31-6-70. Furthermore, the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were available to ASCs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ASCs. Ga. Soc'y of Ambulatory Surgery Ctrs. v. Ga. Dep't of Cmty. Health, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

ARTICLE 4

REPORTS

31-6-70. Reports to the department by certain health care facilities and all ambulatory surgical centers and imaging centers.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

JUDICIAL DECISIONS

Exhaustion of administrative remedies.

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community Health (DCH) issued to ambulatory surgery centers (ASC) sought information beyond the scope of O.C.G.A. § 31-6-70. Furthermore, the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were available to ASCs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ASCs. Ga. Soc'y of Ambulatory Surgery Ctrs. v. Ga. Dep't of Cmty. Health, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

CHAPTER 7

REGULATION AND CONSTRUCTION OF HOSPITALS AND OTHER HEALTH CARE FACILITIES

Article 1

Regulation of Hospitals and Related Institutions

Sec.
31-7-3.2. Notice of cited deficiency and imposition of sanction.
31-7-12.1. Unlicensed personal care home; civil penalties; negligence per se for certain legal claims; declared nuisance dangerous to public health, safety, and welfare; criminal sanctions.
31-7-19. Nursing homes to annually offer influenza vaccinations to health care workers and other employees; immunity from liability.
31-7-20. Medical facilities to make good faith application to southern regional TRICARE managed care support coordinator for certification in the TRICARE program.

Article 3

Grants for Construction and Modernization of Medical Facilities

31-7-50. Authorization of grants-in-aid.
31-7-51. Definitions.
31-7-53. Matching formula; priority system; use of earnings; approval of federal grant.
31-7-54. Manner of expenditure of construction funds.
31-7-57. Procedure for grants to sponsors of construction projects; injunction of operation by transferee in violation of article.

Article 4

County and Municipal Hospital Authorities

31-7-77. Prohibition on for-profit projects; rates and charges; utilization of revenues to pay certain obligations.

Article 11

Facility Licensing and Employee Records Checks

31-7-250. Definitions.

Article 13

Private Home Care Providers

31-7-300. Definitions.

Article 14

Nursing Homes Employee Records Checks

31-7-350. Definitions.

Cross references. — Offering continuing care when resident purchases resident owned living unit, § 33-45-7.1.

ARTICLE 1

REGULATION OF HOSPITALS AND RELATED INSTITUTIONS

31-7-3.2. Notice of cited deficiency and imposition of sanction.

(a) A nursing home or intermediate care home licensed under this article shall give notice in the event that such facility has been cited by the department for any deficiency for which the facility has received notice of the imposition of any sanction available under federal or state laws or regulations, except where a plan of correction is the only sanction to be imposed.

(b) A notice required under subsection (a) of this Code section shall be of a size and format prescribed by the department and shall contain the following:

(1) A list of each cited deficiency which has resulted in the notice being required;

(2) A description of any actions taken by or of any notices of intent to take action issued by federal or state entities as a result of such cited deficiencies;

(3) The telephone numbers of the state and community long-term care ombudsman programs; and

(4) A statement that a copy of the notice may be obtained upon written request accompanied by a self-addressed stamped envelope.

(c) A notice required by subsection (a) of this Code section shall be posted at the facility giving the notice:

(1) In an area readily accessible and continuously visible to the facility's residents and their representatives;

(2) Within 14 days after the facility receives notification of imposition of a sanction for a cited deficiency which requires the notice; and

(3) Until the department has determined such cited deficiencies no longer exist, at which time the notice may be removed.

(d) In addition to the posted notice required by subsection (c) of this Code section, a notice, containing the information set forth in subsection (b) of this Code section, shall also be provided by the facility upon written request. The facility shall be responsible for mailing a copy of such notice when the written request is accompanied by a postage paid self-addressed envelope.

(e) Each applicant to a facility shall receive upon written request with his application a copy of the most recent notice which has been

distributed pursuant to this subsection. The facility may inform the applicant of any corrective actions taken in response to the cited deficiencies contained in such notice.

(f) In the event that the facility previously has been required to have posted or provided notice of the same cited deficiency arising from the same act, occurrence, or omission, this Code section should not be construed to require the facility to post or provide duplicate notice of such cited deficiency so long as the notice is made in a manner consistent with subsections (b) and (c) of this Code section.

(g) In the case of a violation of this Code section, the department may impose administrative sanctions as otherwise provided by law in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(h) The department may promulgate rules and regulations to implement the provisions of this Code section.

(i) No violation of any regulation promulgated pursuant to the federal Nursing Home Reform Act, 42 U.S.C. Sections 1396r and 1395i-3, or any regulation included in Ga. Comp. R. & Regs. 111-8-50 or 111-8-56 or the successor of such regulations as they existed on May 12, 2015, shall constitute negligence per se; provided, however, that the court in any civil action shall take judicial notice of these regulations and admit them into evidence if found to be relevant to the harm alleged in the complaint. Nothing in this subsection shall abrogate any express cause of action authorized under law or be construed to amend or repeal any provision of the "Bill of Rights for Residents of Long-term Care Facilities" in Article 5 of Chapter 8 of Title 31.

(j)(1) The results or findings of a federal or state survey or inspection of a nursing home facility, including any statement of deficiencies or reports, shall not be used or referenced in an advertisement or solicitation by any person or any entity, unless the advertisement or solicitation includes all of the following:

(A) The date the survey was conducted;

(B) A statement that the Department of Community Health conducts a survey of all nursing home facilities at least once every 15 months;

(C) If a finding or deficiency cited in the statement of deficiencies has been substantially corrected, a statement that the finding or deficiency has been substantially corrected and the date that the finding or deficiency was substantially corrected;

(D) The number of findings and deficiencies cited in the statement of deficiencies on the basis of the survey and a disclosure of the severity level for each finding and deficiency;

(E) The average number of findings and deficiencies cited in statements of deficiencies on the basis of surveys conducted by the department during the same calendar year as the survey used in the advertisement;

(F) A disclosure of whether each finding or deficiency caused actual bodily harm to any residents and the number of residents harmed thereby; and

(G) A statement that the advertisement is neither authorized nor endorsed by any government agency.

(2) In addition to any other remedies and damages allowed by law, a party found to have violated paragraph (1) of this subsection shall be liable for attorney fees and expenses of litigation incurred in an action to restrain or enjoin such violation; provided, however, that damages, attorney fees, and expenses of litigation shall not be recoverable against any newspaper, news outlet, or broadcaster publishing an advertisement or solicitation submitted by a third party for a fee. (Code 1981, § 31-7-3.2, enacted by Ga. L. 1991, p. 1603, § 2; Ga. L. 2015, p. 1315, § 1/HB 342.)

The 2015 amendment, effective May 12, 2015, added subsections (i) and (j). See editor's note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, "May 12, 2015" was substituted for "the effective date of this subsection" in subsection (i).

Editor's notes. — Ga. L. 2015, p. 1315, § 2/HB 342, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all causes of actions arising on and after such date."

31-7-11. Written summary of hospital service charge rates.

JUDICIAL DECISIONS

Discovery in hospital lien case. — In a hospital lien case, the trial court erred by granting a patient's motion to compel seeking discovery from a medical center as to the center's rate-setting agreements with insurers and the center's revenue and other information because the patient was uninsured and such discovery was not relevant nor reasonably calculated to lead to admissible evidence. Med. Ctr., Inc. v. Bowden, 327 Ga. App. 714, 761 S.E.2d 116 (2014).

31-7-12.1. Unlicensed personal care home; civil penalties; negligence per se for certain legal claims; declared nuisance dangerous to public health, safety, and welfare; criminal sanctions.

(a) A facility shall be deemed to be an "unlicensed personal care home" if it is unlicensed and not exempt from licensure and:

(1) The facility is providing personal services and is operating as a personal care home as those terms are defined in Code Section 31-7-12;

(2) The facility is held out as or represented as providing personal services and operating as a personal care home as those terms are defined in Code Section 31-7-12; or

(3) The facility represents itself as a licensed personal care home.

(b) Any unlicensed personal care home shall be assessed by the department, after opportunity for hearing in accordance with the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a civil penalty in the amount of $100.00 per bed per day for each day of violation of subsection (b) of Code Section 31-7-12. The department shall send a notice by certified mail or statutory overnight delivery stating that licensure is required and the department's intent to impose a civil penalty. Such notice shall be deemed to be constructively received on the date of the first attempt to deliver such notice by the United States Postal Service. The department shall take no action to collect such civil penalty until after opportunity for a hearing.

(c) In addition to other remedies available to the department, the civil penalty authorized by subsection (b) of this Code section shall be doubled if the owner or operator continues to operate the unlicensed personal care home, after receipt of notice pursuant to subsection (b) of this Code section.

(d) The owner or operator of a personal care home who is assessed a civil penalty in accordance with this Code section may have review of such civil penalty by appeal to the superior court in the county in which the action arose or to the Superior Court of Fulton County in accordance with the provisions of Code Section 31-5-3.

(e) In addition to the sanctions authorized herein, an unlicensed personal care home shall be deemed to be negligent per se in the event of any claim for personal injury or wrongful death of a resident.

(f) It is declared that the owning or operating of an unlicensed personal care home in this state constitutes a nuisance dangerous to the public health, safety, and welfare. The commissioner or the district attorney of the judicial circuit in which such unlicensed personal care home is located may file a petition to abate such nuisance as provided in Chapter 2 of Title 41.

(g) Any person who owns or operates a personal care home in violation of subsection (b) of Code Section 31-7-12 shall be guilty of a misdemeanor for a first violation, unless such violation is in conjunction with abuse, neglect, or exploitation as defined in Code Section 30-5-3, in which case such person shall be guilty of a felony and, upon conviction,

shall be punished by imprisonment for not less than one nor more than five years. Upon conviction for a second or subsequent such violation, such person shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than ten years. (Code 1981, § 31-7-12.1, enacted by Ga. L. 1994, p. 461, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2011, p. 227, § 13A/SB 178; Ga. L. 2012, p. 351, § 3/HB 1110; Ga. L. 2014, p. 682, § 1/HB 899.)

The 2014 amendment, effective July 1, 2014, added the second sentence in subsection (f); redesignated the former second and third sentences of subsection (f) as present subsection (g); and rewrote subsection (g).

31-7-19. Nursing homes to annually offer influenza vaccinations to health care workers and other employees; immunity from liability.

(a) Each nursing home shall annually offer on site to its health care workers and other employees who have direct contact with patients, at no cost, vaccinations for the influenza virus in accordance with the recommendations of the Centers for Disease Control and Prevention, subject to availability of the vaccine. Each nursing home shall keep on record a signed statement from each such health care worker and employee stating that he or she has been offered vaccination against the influenza virus and has either accepted or declined such vaccination. A nursing home may offer to its health care workers and other employees who have direct contact with patients any other vaccination required or recommended by, and in accordance with the recommendations of, the Centers for Disease Control and Prevention, which may be offered or administered pursuant to standing orders approved by the nursing home's medical staff to ensure the safety of employees, patients, visitors, and contractors.

(b) A nursing home or health care provider acting in good faith and in accordance with generally accepted health care standards applicable to such nursing home or health care provider shall not be subject to administrative, civil, or criminal liability or to discipline for unprofessional conduct for complying with the requirements of this Code section. (Code 1981, § 31-7-19, enacted by Ga. L. 2013, p. 783, § 1/HB 208.)

Effective date. — This Code section became effective July 1, 2013.

31-7-20. Medical facilities to make good faith application to southern regional TRICARE managed care support coordinator for certification in the TRICARE program.

(a) Each medical facility in this state shall, not later than July 1, 2015, make a good faith application to the southern regional TRICARE managed care support contractor for certification in the TRICARE program.

(b) If any medical facility fails to qualify for certification in the TRICARE program, such medical facility shall implement a plan to upgrade the facility, equipment, personnel, or such other cause for the disqualification within one year of notice of such deficiency.

(c) Each medical facility shall submit reports to the commissioner detailing its efforts to join the TRICARE program and shall submit copies of applications, acceptances or rejections, correspondences, and any other information the commissioner deems necessary.

(d) The commissioner shall maintain files on each medical facility in this state and shall monitor each medical facility's efforts to join the TRICARE program.

(e) Nothing in this Code section shall require a medical facility to enter into a contract with the southern regional managed care support contractor or to participate in TRICARE as a network provider or as a participating non-network provider, as such terms are defined in the federal TRICARE regulations. (Code 1981, § 31-7-20, enacted by Ga. L. 2014, p. 83, § 1-1/SB 391.)

Effective date. — This Code section became effective July 1, 2014.

ARTICLE 3

GRANTS FOR CONSTRUCTION AND MODERNIZATION OF MEDICAL FACILITIES

31-7-50. Authorization of grants-in-aid.

The state is authorized to make grants to any county, municipality, or any combination thereof or to any hospital authority to assist in the construction and modernization of publicly owned and publicly operated medical facilities, auxiliary medical facilities, and mental health centers as defined in Code Section 31-7-51. The amount of the grant shall be determined in accordance with Code Sections 31-7-52 and 31-7-53. (Ga. L. 1949, p. 263, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 214, § 1; Ga. L. 1955, p. 410, § 1; Code 1933, § 88-2101, enacted by Ga. L.

1964, p. 499, § 1; Ga. L. 1966, p. 716, § 1; Ga. L. 2015, p. 385, § 4-2/HB 252.)

The 2015 amendment, effective July 1, 2015, deleted "mental retardation centers," following "auxiliary medical facilities," in this Code section.

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

31-7-51. Definitions.

(a) As used in this article, the term:

(1) "Auxiliary medical facilities" means diagnostic and treatment facilities, nursing homes, chronic illness hospitals, and rehabilitation centers.

(2) "Construction project" means a program for the construction of any medical facility or auxiliary medical facility or mental health center, as evidenced by the approval of a project under Title VI or Title VII of the federal Public Health Service Act, as now or hereafter amended.

(3) "Hospital authority" means any hospital authority created under the "Hospital Authorities Law," Article 4 of this chapter, as now or hereafter amended.

(4) "Medical facilities" means general hospitals, psychiatric hospitals, nurse training facilities, tuberculosis hospitals, and public health centers.

(5) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community or communities in or near which the facility is situated.

(6) Reserved.

(7) "Modernization project" means the alteration, major repair, remodeling, replacement, and renovation of existing buildings (including original equipment thereof) and replacement of obsolete, built-in equipment of existing buildings, as evidenced by the approval of a project under Title VI or Title VII of the federal Public Health Service Act, as now or hereafter amended.

(8) "Publicly operated" means operated by a county, municipality, hospital authority, or any combination thereof.

(9) "Publicly owned" means that a county, municipality, hospital authority, or any combination thereof holds title to or has a long-term

lease acceptable to the state agency on the property on which the construction or modernization is proposed.

(10) "State agency" means the State Health Planning and Development Agency or any successor designated as the agency of state government to administer the state construction and modernization plan and receive funds pursuant to Titles VI and VII of the federal Public Health Service Act, as amended.

(b) The terms "hospital," "psychiatric hospital," "nurse training facilities," "public health center," "rehabilitation facility," "nursing home," "chronic illness hospital," "long-term care facility," "mental health center," "construction," "cost of construction," "modernization," and "cost of modernization" shall have meanings consistent with those respectively ascribed to them in Titles VI and VII of the federal Public Health Service Act, as now or hereafter amended. (Code 1933, § 88-2102, enacted by Ga. L. 1966, p. 716, § 1; Ga. L. 1996, p. 6, § 31; Ga. L. 2015, p. 385, § 4-3/HB 252.)

The 2015 amendment, effective July 1, 2015, in paragraph (a)(2), deleted ", mental retardation center," following "auxiliary medical facility" near the middle, and substituted "Title VII of the federal Public Health Service Act" for "Title VII, Public Health Service Act; and substituted "Reserved." for the former provisions of paragraph (a)(6), which read: "'Mental retardation center' means a facility specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarded, including facilities for training specialists and sheltered workshops for the mentally retarded but only if such workshops are part of the facilities which provide or will provide comprehensive services for the mentally retarded."; in paragraphs (a)(7) and (a)(10), inserted "federal"; and, in subsection (b), deleted "'mental retardation center,'" following "'long-term care facility,'" near the middle, and inserted "federal".

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

31-7-53. Matching formula; priority system; use of earnings; approval of federal grant.

(a) The state agency shall establish a matching formula for each construction and modernization category by fiscal year. Any change in a matching formula shall apply in the same manner to each construction and modernization project within the category approved during the fiscal year.

(b) Grants made pursuant to this article shall be in accordance with the priority system as approved by the state agency and the United States secretary of health and human services.

(c) No part of the net earnings of publicly owned and publicly operated medical facilities, auxiliary medical facilities, and mental health centers constructed with the assistance of a grant under this

article shall inure to the benefit of any private corporation or individual.

(d) Any grant made pursuant to this article shall be contingent upon the approval for that project of a federal grant approved by the United States secretary of health and human services under either Title VI or Title VII of the Public Health Service Act, as now or hereafter amended. (Ga. L. 1949, p. 263, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 214, § 1; Ga. L. 1955, p. 410, § 1; Code 1933, § 88-2105, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2104, enacted by Ga. L. 1966, p. 716, § 1; Ga. L. 1982, p. 3, § 31; Ga. L. 1992, p. 6, § 31; Ga. L. 2015, p. 385, § 4-4/HB 252.)

The 2015 amendment, effective July 1, 2015, deleted "mental retardation centers," following "auxiliary medical facilities," in subsection (c).

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

31-7-54. Manner of expenditure of construction funds.

In order to assist the several counties, municipalities, or any combination thereof or any hospital authorities created under the "Hospital Authorities Law," Article 4 of this chapter, such funds as are appropriated for each fiscal year for the construction of publicly owned and publicly operated medical facilities, auxiliary medical facilities, and mental health centers shall be expended in accordance with the provisions of this article. (Ga. L. 1949, p. 263, § 2; Ga. L. 1955, p. 410, § 2; Code 1933, § 88-2106, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2105, enacted by Ga. L. 1966, p. 716, § 1; Ga. L. 2015, p. 385, § 4-5/HB 252.)

The 2015 amendment, effective July 1, 2015, deleted "mental retardation centers," following "auxiliary medical facilities," in this Code section.

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

31-7-57. Procedure for grants to sponsors of construction projects; injunction of operation by transferee in violation of article.

(a) For each construction project, there shall be submitted to the state agency an application for state funds.

(b) Upon approving an application under this Code section, the state agency shall submit a budget request to the Office of Planning and Budget, based upon such application. Approval by the Office of Planning and Budget shall constitute an obligation of the state.

(c) Payments to the sponsor of a construction project shall be made in installments as construction progresses at intervals to be determined at the discretion of the state agency; and the state agency shall have the right to inspect and audit records and accounts of the sponsor as a condition precedent to making payments.

(d) If any publicly owned and publicly operated medical facility, auxiliary medical facility, or mental health center for which funds have been paid under this Code section shall be leased to any corporation, person, organization, or body other than one eligible to receive a grant under this article or shall be sold or used for any purpose contrary to the provision under which the grant was made, at any time within 20 years after completion of construction, and such change in lease, sale, or use is not approved by the state agency, such agency may bring an equitable proceeding for writ of injunction against any person, firm, corporation, or organization operating in violation of this article. The proceedings shall be filed in the county in which such persons reside or, in the case of a firm or corporation, where such firm or corporation maintains its principal office; and, unless it is shown that such person, firm, or corporation which has leased such medical facility, auxiliary medical facility, or mental health center would have been eligible to accept the grant-in-aid from the state in the first instance and the lease has been approved by the state agency or the sale or use has been approved by such agency, the writ of injunction shall issue and such person, firm, or corporation shall be perpetually enjoined throughout the state from operating in violation of the provisions of this subsection. It shall not be necessary in order to obtain the equitable relief provided in this subsection that the state agency show that such person, firm, or corporation is ineligible nor to prove that there is no adequate remedy at law. In addition, the state agency shall be entitled to bring an action and recover from the transferor and transferee of any facility specified in this subsection such percentage of the value of the facility as the state grant bore toward the total construction cost of that facility as determined by agreement of the parties or by action brought in court. (Ga. L. 1949, p. 263, § 7; Ga. L. 1955, p. 410, § 6; Code 1933, § 88-2109, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2108, enacted by Ga. L. 1966, p. 716, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2015, p. 385, § 4-6/HB 252.)

The 2015 amendment, effective July 1, 2015, in subsection (d), deleted "mental retardation center," following "auxiliary medical facility," in the first and second sentences, substituted "provisions of this subsection" for "provisions set out above" at the end of the second sentence, and substituted "specified in this subsection" for "specified above" in the middle of the last sentence.

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

ARTICLE 4

COUNTY AND MUNICIPAL HOSPITAL AUTHORITIES

31-7-72. Creation of hospital authority in each county and municipality.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-74. Residency requirement; officers; compensation; rules and regulations.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-75. Functions and powers.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-77. Prohibition on for-profit projects; rates and charges; utilization of revenues to pay certain obligations.

(a) No authority shall operate or construct any project for profit. It shall fix rates and charges consistent with this declaration of policy and such as will produce revenues only in amounts sufficient, together with all other funds of the authority, to pay principal and interest on certificates and obligations of the authority, to provide for maintenance and operation of the project, and to create and maintain a reserve sufficient to meet principal and interest payments due on any certificates in any one year after the issuance thereof. The authority may provide reasonable reserves for the improvement, replacement, or expansion of its facilities or services.

(b) Notwithstanding subsection (a) of this Code section or any other provisions to the contrary, a joint hospital authority established pursuant to Code Section 31-7-72 which operates a hospital containing more than 900 licensed beds shall only utilize revenues to pay principal and

interest on certificates and obligations of the authority, to pay pension plan obligations of the authority existing as of January 1, 2013, and for funding projects leased by the authority to a lessee pursuant to a contract entered into in accordance with paragraph (7) of Code Section 31-7-75; provided, however, that no more than 1 percent of revenues shall be utilized to pay for personnel costs for employees or contractors of the authority. (Ga. L. 1941, p. 241, § 6; Code 1933, § 88-1806, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2013, p. 1037, § 1/SB 62.)

The 2013 amendment, effective May 7, 2013, designated the existing provisions as subsection (a); and added subsection (b).

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-79. Liability on revenue certificates; tax exemption.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-84. Payment for authority's services and facilities; levy of tax by political subdivisions; compliance by authority with county budgetary procedures.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-85. Contracts with political subdivisions.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-89. Procedure for dissolution; disposition of property.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

ARTICLE 6

PEER REVIEW GROUPS

31-7-132. Immunity from liability for peer review activities; immunity from liability of persons providing information.

JUDICIAL DECISIONS

Hospital immune from liability because malice not established.

Superior court erred in denying a hospital's motion for summary judgment in a doctor's action contending that the denial of an application for renewal of clinical privileges was void because the hospital was entitled to immunity from the doctor's equitable claims pursuant to O.C.G.A. § 31-7-132(a); the superior court erred in finding that there was evidence from which the jury could infer that the peer review process was motivated by malice. DeKalb Med. Ctr. v. Obekpa, 315 Ga. App. 739, 728 S.E.2d 265 (2012).

31-7-133. Confidentiality of review organization's records.

Cross references. — Privileges generally, § 24-5-501 et seq.

ARTICLE 11

FACILITY LICENSING AND EMPLOYEE RECORDS CHECKS

31-7-250. Definitions.

As used in this article, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of any of the following offenses:

(A) A violation of Code Section 16-5-21, relating to aggravated assault;

(B) A violation of Code Section 16-5-24, relating to aggravated battery;

(C) A violation of Code Section 16-6-1, relating to rape;

(D) A felony violation of Code Section 16-8-2, relating to theft by taking;

(E) A felony violation of Code Section 16-8-3, relating to theft by deception;

(F) A felony violation of Code Section 16-8-4, relating to theft by conversion;

(G) A felony violation of Code Section 16-9-1;

(H) A violation of Code Section 16-5-1;

(I) A violation of Code Section 16-4-1, relating to criminal attempt as it concerns attempted murder;

(J) A violation of Code Section 16-8-40, relating to robbery;

(K) A violation of Code Section 16-8-41, relating to armed robbery;

(L) A violation of Chapter 13 of Title 16, relating to controlled substances;

(M) A violation of Code Section 16-5-23.1, relating to battery;

(N) A violation of Code Section 16-6-5.1;

(O) A violation of Article 8 of Chapter 5 of Title 16;

(P) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere; or

(Q) Any other criminal offense as determined by the department and established by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," that would indicate the unfitness of an individual to provide care to or be in contact with persons residing in a facility.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(3.1) "Department" means the Department of Community Health.

(4) "Director" means the chief administrative or executive officer or manager.

(5) "Employee" means any person, other than a director, utilized by a personal care home to provide personal services to any resident on behalf of the personal care home or to perform at any facilities of the personal care home any duties which involve personal contact between that person and any paying resident of the personal care home.

(6) "Facility" means real property of a personal care home where residents reside.

(7) "Fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(8) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(9) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(10) "License" means the permit or document issued by the department to authorize the personal care home to which it is issued to operate a facility under this chapter.

(11) "Personal care home" or "home" means a home required to be licensed or permitted under Code Section 31-7-12 or an assisted living community as defined in Code Section 31-7-12.2.

(11.1) "Personal services" includes, but is not limited to, individual assistance with or supervision of self-administered medication and essential activities of daily living such as eating, bathing, grooming, dressing, and toileting.

(12) "Preliminary records check application" means an application for a preliminary records check determination on forms provided by the department.

(13) "Preliminary records check determination" means a satisfactory or unsatisfactory determination by the department based only upon a comparison of GCIC information with other than fingerprint information regarding the person upon whom the records check is being performed.

(14) "Records check application" means two sets of classifiable fingerprints, a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check under this article, and an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations,

whether or not the violation occurred in this state, and such additional information as the department may require.

(15) "Regular license" means a permit which will remain in effect for the personal care home, until and unless the facility ceases to operate or revocation proceedings are commenced.

(16) "Satisfactory determination" means a written determination that a person for whom a records check was performed was found to have no criminal record.

(17) "Temporary license" means a provisional permit which expires six months or 12 months from the date of issuance, unless extended for good cause by the department.

(18) "Unsatisfactory determination" means a written determination that a person for whom a records check was performed has a criminal record. (Code 1981, § 31-7-250, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1986, p. 822, § 1; Ga. L. 1994, p. 1359, § 1; Ga. L. 2002, p. 942, § 1; Ga. L. 2008, p. 12, § 2-19/SB 433; Ga. L. 2011, p. 227, § 17/SB 178; Ga. L. 2012, p. 351, § 4/HB 1110; Ga. L. 2012, p. 899, § 8-12/HB 1176; Ga. L. 2013, p. 524, § 3-3/HB 78; Ga. L. 2014, p. 444, § 2-9/HB 271.)

The 2013 amendment, effective July 1, 2013, deleted ", relating to sexual assault against a person in custody" following "Code Section 16-6-5.1" at the end of subparagraph (2)(N), and substituted "Article 8 of Chapter 5 of Title 16" for "Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person" in subparagraph (2)(O).

The 2014 amendment, effective July 1, 2014, deleted ", relating to murder and felony murder" following "Code Section 16-5-1" at the end of subparagraph (2)(H).

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

ARTICLE 13
PRIVATE HOME CARE PROVIDERS

31-7-300. Definitions.

As used in this article, the term:

(1) "Companion or sitter tasks" means the following tasks which are provided to elderly, handicapped, or convalescing individuals: transport and escort services; meal preparation and serving; and household tasks essential to cleanliness and safety. These tasks do not include assistance with bathing, toileting, grooming, shaving, dental care, dressing, and eating.

(2) "Department" means the Department of Community Health.

(3) "Personal care tasks" means assistance with bathing, toileting, grooming, shaving, dental care, dressing, and eating; and may

include but are not limited to proper nutrition, home management, housekeeping tasks, ambulation and transfer, and medically related activities, including the taking of vital signs only in conjunction with the above tasks.

(4) "Private home care provider" means any person, business entity, corporation, or association, whether operated for profit or not for profit, that directly provides or makes provision for private home care services through:

(A) Its own employees who provide nursing services, personal care tasks, or companion or sitter tasks;

(B) Contractual arrangements with independent contractors who are health care professionals licensed pursuant to Title 43; or

(C) Referral of other persons to render home care services, when the individual making the referral has ownership or financial interest in the delivery of those services by those other persons who would deliver those services.

(5) "Private home care services" means those items and services provided at a patient's residence that involve direct care to that patient and includes, without limitation, any or all of the following:

(A) Nursing services, provided that such services can only be provided by a person licensed under Chapter 26 of Title 43;

(B) Personal care tasks; and

(C) Companion or sitter tasks.

Private home care services shall not include physical, speech, or occupational therapy; medical nutrition therapy; medical social services; or home health aide services provided by a home health agency.

(6) "Residence" means the place where an individual makes that person's permanent or temporary home, whether that person's own apartment or house, a friend or relative's home, or a personal care home, but shall not include a hospital, nursing home, hospice, or other health care facility licensed under Article 1 of this chapter. (Code 1981, § 31-7-300, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 2008, p. 12, § 2-23/SB 433; Ga. L. 2015, p. 336, § 2/HB 183.)

The 2015 amendment, effective July 1, 2015, in paragraph (4), substituted "who provide nursing services, personal care tasks, or companion or sitter tasks" for "or agents" at the end of subparagraph (4)(A), and inserted "who are health care professionals licensed pursuant to Title 43" in subparagraph (4)(B).

Editor's notes. — Ga. L. 2015, p. 336, § 1/HB 183, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Home Care Patient Protection Act.'"

ARTICLE 14

NURSING HOMES EMPLOYEE RECORDS CHECKS

31-7-350. Definitions.

As used in this article, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of an offense which constitutes a felony with respect to the following:

(A) A violation of Code Section 16-5-21;

(B) A violation of Code Section 16-5-24;

(C) A violation of Code Section 16-6-1;

(D) A violation of Code Section 16-8-2;

(E) A violation of Code Section 16-8-3;

(F) A violation of Code Section 16-8-4;

(G) A violation of Code Section 16-5-1;

(H) A violation of Code Section 16-4-1;

(I) A violation of Code Section 16-8-40;

(J) A violation of Code Section 16-8-41;

(K) A felony violation of Code Section 16-9-1;

(L) A violation of Article 8 of Chapter 5 of Title 16;

(M) A violation of Chapter 13 of Title 16; or

(N) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere.

(3) "Criminal record" means any of the following which have reached final disposition within ten years of the date the criminal record check is conducted:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and charges for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Employment applicant" means any person seeking employment by a nursing home. This term shall not include persons employed by the nursing home prior to July 1, 1995.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "Nursing home" or "home" means a home required to be licensed or permitted as a nursing home under the provisions of this chapter.

(7) "Satisfactory determination" means a written determination by a nursing home that a person for whom a record check was performed was found to have no criminal record.

(8) "Unsatisfactory determination" means a written determination by a nursing home that a person for whom a record check was performed was found to have a criminal record. (Code 1981, § 31-7-350, enacted by Ga. L. 1995, p. 570, § 1; Ga. L. 2001, p. 806, § 1; Ga. L. 2012, p. 899, § 8-13/HB 1176; Ga. L. 2013, p. 524, § 3-4/HB 78.)

The 2013 amendment, effective July 1, 2013, deleted ", relating to aggravated assault" following "Code Section 16-5-21" at the end of subparagraph (2)(A); deleted ", relating to aggravated battery" following "Code Section 16-5-24" at the end of subparagraph (2)(B); deleted ", relating to rape" following "Code Section 16-6-1" at the end of subparagraph (2)(C); deleted ", relating to theft by taking" following "Code Section 16-8-2" at the end of subparagraph (2)(D); deleted ", relating to theft by deception" following "Code Section 16-8-3" at the end of subparagraph (2)(E); deleted ", relating to theft by conversion" following "Code Section 16-8-4" at the end of subparagraph (2)(F); deleted ", relating to murder and felony murder" following "Code Section 16-5-1" at the end of subparagraph (2)(G); deleted ", relating to criminal attempt as it concerns attempted murder" following "Code Section 16-4-1" at the end of subparagraph (2)(H); deleted ", relating to robbery" following "Code Section 16-8-40" at the end of subparagraph (2)(I); deleted ", relating to armed robbery" following "Code Section 16-8-41" at the end of subparagraph (2)(J); added subparagraph (2)(L); redesignated former subparagraphs (2)(L) and (2)(M) as present subparagraphs (2)(M) and (2)(N), respectively; and deleted ", relating to controlled substances" following "Title 16" at the end of subparagraph (2)(M).

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

ARTICLE 15

HOSPITAL ACQUISITION

31-7-401. Notice to Attorney General of acquisition.

JUDICIAL DECISIONS

Promissory estoppel did not apply. — When a facilities owner did not sign an asset sale agreement, a hospital's promissory estoppel claim failed because the parties' letter of intent coupled with the hospital's representation in a premerger notification that the parties would not execute a "binding asset sale agreement" until the Georgia Attorney General approved the agreement established as a matter of law that the hospital could not reasonably rely on the facilities owner's "promise" to purchase the hospital assets. St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs., 705 F.3d 1289 (11th Cir. 2013).

Breach of contract. — When a facilities owner did not sign an asset sale agreement, a hospital's breach of contract claim failed because, inter alia, the parties' letter of intent did not incorporate the terms of the asset sale agreement and made clear that those terms were provisional, there was no evidence that the parties agreed to be bound by the terms of the asset sale agreement and, by filing premerger notifications, the parties represented as true that the asset sale agreement would not become a binding, enforceable contract until signed by the parties, and that the letter of intent superseded any written or oral agreements that may have existed. St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs., 705 F.3d 1289 (11th Cir. 2013).

31-7-402. Content and form of notice to Attorney General; retention of experts; payment of costs and expenses.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

31-7-405. Public hearing; expert or consultant required to testify; testimony; representative of acquiring entity to testify.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

JUDICIAL DECISIONS

Breach of contract. — When a facilities owner did not sign an asset sale agreement, a hospital's breach of contract claim failed because, inter alia, the parties' letter of intent did not incorporate the terms of the asset sale agreement and made clear that those terms were provisional, there was no evidence that the parties agreed to be bound by the terms of the asset sale agreement and, by filing premerger notifications, the parties represented as true that the asset sale agreement would not become a binding, enforceable contract until signed by the parties, and that the letter of intent superseded any written or oral agreements

that may have existed. St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs., 705 F.3d 1289 (11th Cir. 2013).

CHAPTER 8

CARE AND PROTECTION OF INDIGENT AND ELDERLY PATIENTS

Article 3

Long-term Care Ombudsman Program

Sec.
31-8-51. Definitions.

Article 4

Reporting Abuse or Exploitation of Residents in Long-term Care Facilities

31-8-81. Definitions.
31-8-82. Persons required to report abuse or exploitation; time for making report; contents of report; records; privileged communications.
31-8-86. Confidentiality.

Article 6

Indigent Care Trust Fund

31-8-152.1. State sales and use taxation of certain health care services [Repealed].

Article 6C

Hospital Medicaid Financing Program

31-8-179. (Repealed effective June 30, 2017) Short title.
31-8-179.1. (Repealed effective June 30, 2017) Definitions.
31-8-179.2. (Repealed effective June 30, 2017) Department of Community Health authorized to assess one or more provider payments on hospitals for the purpose of obtaining federal financial participation for Medicaid.
31-8-179.3. (Repealed effective June 30, 2017) Provider payments assessed to be deposited in segregated accounts within Indigent Care Trust Fund; sole purpose of funds to obtain federal financial participation for medical assistance payments for Medicaid recipients; retention and inspection of records; penalties.
31-8-179.4. (Repealed effective June 30, 2017) Authorized use of appropriated funds.
31-8-179.5. (Repealed effective June 30, 2017) Applicability of Georgia Medical Assistance Act.
31-8-179.6. (Repealed effective June 30, 2017) Termination date.

Article 9

Federal and State Funded Health Care Financing Programs Overview Committee

31-8-210. Committee established; composition; officers; terms of office; duties and responsibilities; assistance from other state officers and agencies; compensation, per diem, and expense allowances; funding.

Article 10

Georgia Alzheimer's and Related Dementias State Plan Task Force

31-8-300 through 31-8-306 [Repealed].

ARTICLE 3

LONG-TERM CARE OMBUDSMAN PROGRAM

31-8-51. Definitions.

As used in this article, the term:

(1) "Community ombudsman" means a person certified as a community ombudsman pursuant to Code Section 31-8-52.

(1.1) "Department" means the Department of Human Services.

(2) "Long-term care facility" means any skilled nursing home, intermediate care home, private home care provider, assisted living community, or personal care home now or hereafter subject to regulation and licensure by the Department of Community Health.

(3) "Resident" means any person who is receiving treatment or care in any long-term care facility who seeks admission to such facility or who has been discharged or transferred from such facility.

(4) "State ombudsman" means the state ombudsman established under Code Section 31-8-52. (Code 1933, § 88-1901a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 2009, p. 453, § 2-16/HB 228; Ga. L. 2011, p. 227, § 18/SB 178; Ga. L. 2014, p. 477, § 1/SB 207.)

The 2014 amendment, effective July 1, 2014, inserted "private home care provider," in paragraph (2).

ARTICLE 4

REPORTING ABUSE OR EXPLOITATION OF RESIDENTS IN LONG-TERM CARE FACILITIES

31-8-81. Definitions.

As used in this article, the term:

(1) "Abuse" means any intentional or grossly negligent act or series of acts or intentional or grossly negligent omission to act which causes injury to a resident, including, but not limited to, assault or battery, failure to provide treatment or care, or sexual harassment of the resident.

(1.1) "Department" means the Department of Community Health.

(2) "Exploitation" means the illegal or improper use of a resident or the resident's resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for one's own or another's profit or advantage.

(3) "Long-term care facility" or "facility" means any skilled nursing home, intermediate care home, assisted living community, personal care home, or community living arrangement now or hereafter subject to regulation and licensure by the department.

(4) "Resident" means any person receiving treatment or care in a long-term care facility. (Code 1933, § 88-1902c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 2003, p. 558, § 4; Ga. L. 2007, p. 219, § 3/HB 233; Ga. L. 2011, p. 227, § 19/SB 178; Ga. L. 2011, p. 705, § 4-11/HB 214; Ga. L. 2013, p. 524, § 1-11/HB 78.)

The 2013 amendment, effective July 1, 2013, in paragraph (2), substituted "the illegal or improper use of a resident or the resident's resources" for "an unjust or improper use of another person or the person's property"; and inserted "or another's" near the end.

31-8-82. Persons required to report abuse or exploitation; time for making report; contents of report; records; privileged communications.

(a) Any of the following people who have reasonable cause to believe that any resident or former resident has been abused or exploited while residing in a long-term care facility shall immediately make a report as described in subsection (d) of this Code section by telephone or in person to the department and shall make the report to the appropriate law enforcement agency or prosecuting attorney:

(1) Any person required to report child abuse as provided in subsection (c) of Code Section 19-7-5;

(2) Administrators, managers, or other employees of hospitals or long-term care facilities;

(3) Physical therapists;

(4) Occupational therapists;

(5) Day-care personnel;

(6) Coroners;

(7) Medical examiners;

(8) Emergency medical services personnel, as defined in Code Section 31-11-49;

(9) Any person who has been certified as an emergency medical technician, cardiac technician, paramedic, or first responder pursuant to Chapter 11 of Title 31;

(10) Employees of a public or private agency engaged in professional health related services to residents; and

(11) Clergy members.

(b) Persons required to make a report pursuant to subsection (a) of this Code section shall also make a written report to the department within 24 hours after making the initial report.

(c) Any other person who has knowledge that a resident or former resident has been abused or exploited while residing in a long-term care facility may report or cause a report to be made to the department or the appropriate law enforcement agency.

(d) A report of suspected abuse or exploitation shall include the following:

(1) The name and address of the person making the report unless such person is not required to make a report;

(2) The name and address of the resident or former resident;

(3) The name and address of the long-term care facility;

(4) The nature and extent of any injuries or the condition resulting from the suspected abuse or exploitation;

(5) The suspected cause of the abuse or exploitation; and

(6) Any other information which the reporter believes might be helpful in determining the cause of the resident's injuries or condition and in determining the identity of the person or persons responsible for the abuse or exploitation.

(e) The department shall maintain accurate records which shall include all reports of abuse or exploitation, the results of all investigations and administrative or judicial proceedings, and a summary of actions taken to assist the resident.

(f) Any suspected abuse or exploitation which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse or exploitation has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law; provided, however, that a member of the clergy shall not be required to report such matters confided to him or her solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. When a clergy member receives information about abuse or exploitation from any other source, the clergy member shall comply with the reporting requirements of this Code section, even though the clergy member may have also received a report of such matters from the confession of the perpetrator. (Code 1933, § 88-1903c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 2009, p. 453, § 1-33/HB 228; Ga. L. 2013, p. 524, § 1-12/HB 78.)

The 2013 amendment, effective July 1, 2013, rewrote this Code section.

31-8-86. Confidentiality.

The identities of the resident, the alleged perpetrator, and persons making a report or providing information or evidence shall not be disclosed to the public unless required to be revealed in court proceedings or upon the written consent of the person whose identity is to be revealed or as otherwise required by law. Upon the resident's or his or her representative's request, the department shall make information obtained in an abuse report or complaint and an investigation available to an allegedly abused or exploited resident or his or her representative for inspection or duplication, except that such disclosure shall be made without revealing the identity of any other resident, the person making the report, or persons providing information by name or inference. For the purpose of this Code section, the term "representative" shall include any person authorized in writing by the resident or appointed by an appropriate court to act upon the resident's behalf. The term "representative" also shall include a family member of a deceased or physically or mentally impaired resident unable to grant authorization; provided, however, that such family members who do not have written or court authorization shall not be authorized by this Code section to receive the resident's health records as defined in Code Section 31-33-1. Nothing in this Code section shall be construed to deny agencies participating in joint investigations at the request of and with the department, or conducting separate investigations of abuse or exploitation within an agency's scope of authority, or law enforcement personnel who are conducting an investigation into any criminal offense in which a resident is a victim from having access to such records. (Code 1933, § 88-1908c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 1991, p. 1601, § 2; Ga. L. 2013, p. 524, § 1-13/HB 78.)

The 2013 amendment, effective July 1, 2013, twice inserted "or her" in the second sentence; inserted "that" in the fourth sentence; and added the last sentence.

ARTICLE 5

BILL OF RIGHTS FOR RESIDENTS OF LONG-TERM CARE FACILITIES

31-8-100. Short title.

JUDICIAL DECISIONS

Long-arm personal jurisdiction over out-of-state parent company not established. — Trial court erred by denying an out-of-state company's motion to

dismiss based on lack of personal jurisdiction because the company met the company's burden of showing a lack of minimum contacts needed to support the exercise of personal jurisdiction, and that conclusion was consistent with other jurisdictional authority holding that ownership of a resident nursing home subsidiary by an out-of-state parent corporation without more is insufficient to obtain jurisdiction of the parent corporation. Drumm Corp. v. Wright, 326 Ga. App. 41, 755 S.E.2d 850 (2014).

ARTICLE 6

INDIGENT CARE TRUST FUND

31-8-152.1. State sales and use taxation of certain health care services.

Repealed by Ga. L. 2011, p. 674, § 1-1/HB 117, effective June 30, 2014.

Editor's notes. — This Code section was based on Code 1981, § 31-8-152.1, enacted by Ga. L. 2011, p. 674, § 1-1/HB 117 and was repealed by its own terms effective June 30, 2014.

ARTICLE 6C

HOSPITAL MEDICAID FINANCING PROGRAM

Effective date. — This article became effective February 13, 2013, for purposes of proposing rules and regulations and effective for all other purposes on July 1, 2013.

Editor's notes. — Ga. L. 2010, p. 9, § 2-1/HB 1055, effective June 30, 2013, repealed the Code sections formerly codified as this article. The former article consisted of Code Sections 31-8-179 and 31-8-179.1 through 31-8-179.8, relating to provider payment agreements, and was based on Code 1981, §§ 31-8-179—31-8-179.8, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055; Ga. L. 2011, p. 752, § 31/HB 142.

31-8-179. (Repealed effective June 30, 2017) Short title.

This article is enacted pursuant to the authority of Article III, Section IX, Paragraph VI(i) of the Constitution and shall be known and may be cited as the "Hospital Medicaid Financing Program Act." (Code 1981, § 31-8-179, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.1. (Repealed effective June 30, 2017) Definitions.

As used in this article, the term:

(1) "Board" means the Board of Community Health.

(2) "Department" means the Department of Community Health.

(3) "Hospital" means an institution licensed pursuant to Chapter 7 of this title which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term includes public, private, rehabilitative, geriatric, osteopathic, and other specialty hospitals but shall not include psychiatric hospitals which shall have the same meaning as facilities as defined in paragraph (7) of Code Section 37-3-1, critical access hospitals as defined in paragraph (3) of Code Section 33-21A-2, or any state owned or state operated hospitals.

(4) "Provider payment" means a payment assessed by the department pursuant to this article for the privilege of operating a hospital. (Code 1981, § 31-8-179.1, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.2. (Repealed effective June 30, 2017) Department of Community Health authorized to assess one or more provider payments on hospitals for the purpose of obtaining federal financial participation for Medicaid.

(a) The board shall be authorized to establish and assess, by board rule, one or more provider payments on hospitals, or a subclass of hospitals, as defined by the board; provided, however, that if any such provider payment is established and assessed, the provider payment shall comply with the requirements of 42 C.F.R. 433.68. Any provider payment assessed pursuant to this article shall not exceed the amount necessary to obtain federal financial participation allowable under Title XIX of the federal Social Security Act. The aggregate amount of any fees established and assessed pursuant to this subsection shall not exceed those percentages of net patient revenues set forth in the General Appropriations Act. The board shall be authorized to discontinue any provider payment assessed pursuant to this article. The board shall cease to impose any such provider payment if:

(1) The provider payments are not eligible for federal matching funds under Title XIX of the federal Social Security Act; or

(2) The department reduces Medicaid payment rates to hospitals as are in effect on June 30, 2012, or reduces the provider payment rate adjustment factors utilized in developing the state Fiscal Year 2013 capitated rates for Medicaid managed care organizations.

(a.1) The General Assembly shall have the authority to override any provider payment assessed by the board pursuant to this Code section in accordance with the procedures contained in subsection (f) of Code Section 50-13-4.

(b) The board shall be authorized to establish rules and regulations to assess and collect any such provider payments, including, but not limited to, payment frequency and schedules, required information to be submitted, record retention, and whether any such provider payment shall be credited toward any indigent or charity care requirements or considered a community benefit. (Code 1981, § 31-8-179.2, enacted by Ga. L. 2013, p. 1, § 1/SB 24; Ga. L. 2013, p. 1037, § 2/SB 62; Ga. L. 2014, p. 866, § 31/SB 340.)

The 2013 amendment, effective May 7, 2013, in paragraph (a)(2), substituted "2012 or reduces" for "2012; reduces", and deleted "; or alters any payment methodology, administrative rule, or payment policy as are in effect on June 30, 2012, or creates any new methodology, rule, or policy that has the effect of reducing Medicaid payments to hospitals" following "organizations" at the end.

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "42 C.F.R. 433.68" for "42 CFR 433.68" in the introductory language of subsection (a) and revised punctuation in paragraph (a)(2).

U.S. Code. — Title XIX of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 1396 et seq.

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.3. (Repealed effective June 30, 2017) Provider payments assessed to be deposited in segregated accounts within Indigent Care Trust Fund; sole purpose of funds to obtain federal financial participation for medical assistance payments for Medicaid recipients; retention and inspection of records; penalties.

(a) Any provider payments assessed pursuant to this article shall be deposited into a segregated account for each payment program within the Indigent Care Trust Fund created pursuant to Code Section 31-8-152. No other funds shall be deposited into any such segregated account or accounts. All funds in any such segregated account or accounts shall be invested in the same manner as authorized for investing other moneys in the state treasury. Any funds deposited into a segregated account pursuant to this article shall be subject to appropriation by the General Assembly.

(b) Any provider payments assessed pursuant to this article shall be dedicated and used for the sole purpose of obtaining federal financial participation for medical assistance payments to providers on behalf of Medicaid recipients pursuant to Article 7 of Chapter 4 of Title 49.

(c) Each hospital shall keep and preserve for a period of seven years such books and records as may be necessary to determine the amount for which it is liable under this article. The department shall have the authority to inspect and copy the records of a hospital for purposes of auditing the calculation of the provider payment. All information obtained by the department pursuant to this article shall be confidential and shall not constitute a public record.

(d) The department shall be authorized to impose a penalty of up to 6 percent for any hospital that fails to pay a provider payment within the time required by the department for each month or fraction thereof that the provider payment is overdue. If a required provider payment has not been received by the department in accordance with department timelines, the department shall withhold an amount equal to the provider payment and penalty owed from any medical assistance payment due such hospital under the Medicaid program. Any provider payment assessed pursuant to this article shall constitute a debt due the state and may be collected by civil action and the filing of tax liens in addition to such methods provided for in this article. Any penalty that accrues pursuant to this subsection shall be credited to the applicable segregated account. (Code 1981, § 31-8-179.3, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.4. (Repealed effective June 30, 2017) Authorized use of appropriated funds.

(a) Notwithstanding any other provision of this chapter, the General Assembly is authorized to appropriate as state funds to the department for use in any fiscal year all revenues dedicated and deposited into one or more segregated accounts. Such appropriations shall be authorized to be made for the sole purpose of obtaining federal financial participation for medical assistance payments to providers on behalf of Medicaid recipients pursuant to Article 7 of Chapter 4 of Title 49. Any appropriation from a segregated account for any purpose other than such medical assistance payments shall be void.

(b) Revenues appropriated to the department pursuant to this Code section shall be used to match federal funds that are available for the purpose for which such funds have been appropriated.

(c) Appropriations from a segregated account to the department shall not lapse to the general fund at the end of the fiscal year. (Code 1981, § 31-8-179.4, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.5. (Repealed effective June 30, 2017) Applicability of Georgia Medical Assistance Act.

Except where inconsistent with this article, the provisions of Article 7 of Chapter 4 of Title 49, the "Georgia Medical Assistance Act of 1977," shall apply to the department in carrying out the purposes of this article. (Code 1981, § 31-8-179.5, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.6. (Repealed effective June 30, 2017) Termination date.

This article shall stand repealed on June 30, 2017, unless reauthorized by the General Assembly prior to that date. (Code 1981, § 31-8-179.6, enacted by Ga. L. 2013, p. 1, § 1/SB 24.)

ARTICLE 9

FEDERAL AND STATE FUNDED HEALTH CARE FINANCING PROGRAMS OVERVIEW COMMITTEE

Effective date. — This article became effective May 7, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, Article 9 of Chapter 8 of Title 31 as enacted by Ga. L. 2013, p. 586, § 1/SB 14, was redesignated as Article 10 of Chapter 8 of Title 31.

31-8-210. Committee established; composition; officers; terms of office; duties and responsibilities; assistance from other state officers and agencies; compensation, per diem, and expense allowances; funding.

(a) There is created as a joint committee of the General Assembly the Federal and State Funded Health Care Financing Programs Overview Committee to be composed of one member of the House of Representatives appointed by the Speaker of the House; one member of the Senate appointed by the President of the Senate; the chairperson of the House Committee on Appropriations or his or her designee; the chairperson of the House Committee on Health and Human Services or his or her designee; the chairperson of the House Committee on Ways and Means or his or her designee; the chairperson of the Senate Appropriations Committee or his or her designee; the chairperson of the Senate Health and Human Services Committee or his or her designee; the chairperson

of the Senate Finance Committee; and the minority leaders of the Senate and House of Representatives or their designees. The members of the committee shall serve two-year terms concurrent with their terms as members of the General Assembly. Beginning in 2013, and every four years thereafter, the chairperson of the committee shall be appointed by the President of the Senate from the membership of the committee, and the vice chairperson of the committee shall be appointed by the Speaker of the House of Representatives from the membership of the committee. Beginning in 2015, and every four years thereafter, the chairperson of the committee shall be appointed by the Speaker of the House of Representatives from the membership of the committee, and the vice chairperson of the committee shall be appointed by the President of the Senate from the membership of the committee. The chairperson and vice chairperson shall serve terms of two years concurrent with their terms as members of the General Assembly. Vacancies in an appointed member's position or in the offices of chairperson or vice chairperson of the committee shall be filled for the unexpired term in the same manner as the original appointment. The committee shall periodically inquire into and review the actions of the board and the department under this article to evaluate the success with which the board and the department are accomplishing the statutory duties and functions as provided in this article.

(b) The board and the department shall cooperate with the committee, its authorized personnel, the Attorney General, the state auditor, the state accounting officer, and other state agencies in order that the charges of the committee set forth in this Code section may be timely and efficiently discharged. The committee shall, on or before the first day of January of each year, and at such other times as it deems necessary, submit to the General Assembly a report of its findings and recommendations based upon the review of the board and the department as set forth in this Code section.

(c)(1) The members of the committee shall receive the same compensation, per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.

(2) The funds necessary for the purposes of the committee shall come from the funds appropriated to and available to the legislative branch of government. (Code 1981, § 31-8-210, enacted by Ga. L. 2013, p. 1037, § 3/SB 62.)

ARTICLE 10

GEORGIA ALZHEIMER'S AND RELATED DEMENTIAS STATE PLAN TASK FORCE

Effective date. — This article became effective May 6, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, Article 9 of Chapter 8 of Title 31 as enacted by Ga. L. 2013, p. 586, § 1/SB 14, was redesignated as Article 10 of Chapter 8 of Title 31.

31-8-300 through 31-8-306.

Repealed by Ga. L. 2014, p. 866, § 31/SB 340, effective April 29, 2014.

Editor's notes. — This article was based on Ga. L. 2013, p. 586, § 1/SB 14.

CHAPTER 9

CONSENT FOR SURGICAL OR MEDICAL TREATMENT

Cross references. — Adult's reliance on prayer or religious nonmedical means of treatment of dependent, § 15-11-107.

31-9-2. Persons authorized to consent to surgical or medical treatment.

JUDICIAL DECISIONS

Cited in Med. Ctr., Inc. v. Bowden, 327 Ga. App. 714, 761 S.E.2d 116 (2014).

31-9-3. Emergencies.

JUDICIAL DECISIONS

Cited in Med. Ctr., Inc. v. Bowden, 327 Ga. App. 714, 761 S.E.2d 116 (2014).

31-9-6.1. Disclosure of certain information to persons undergoing certain surgical or diagnostic procedures; failure to comply; exceptions; regulations establishing standards for implementation.

Law reviews. — For annual survey on trial practice and procedure, see 64 Mercer L. Rev. 305 (2012).

CHAPTER 9A

WOMAN'S RIGHT TO KNOW

31-9A-2. Definitions.

Cross references. — Coverage of certain abortions through certain qualified health plans prohibited, § 33-24-59.17.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 253 (2012).

31-9A-6.1. Civil and professional penalties for violations; prerequisites for seeking penalties.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 253 (2012).

CHAPTER 9B

PHYSICIAN'S OBLIGATION IN PERFORMANCE OF ABORTIONS

Law reviews. — For article on the 2012 enactment of this chapter, see 29 Ga. St. U.L. Rev. 253 (2012).

CHAPTER 10

VITAL RECORDS

31-10-9. Registration of births.

JUDICIAL DECISIONS

Cited in Ray v. Hann, 323 Ga. App. 45, 746 S.E.2d 600 (2013).

CHAPTER 11

EMERGENCY MEDICAL SERVICES

Article 3

Personnel

Sec.
31-11-51. Certification and recertification of emergency medical technicians; rules and regulations; use of conviction data in licensing decisions.
31-11-53. Services which may be rendered by certified emergency medical technicians and trainees.
31-11-54. Services which may be rendered by paramedics and paramedic trainees.
31-11-55. Services which may be rendered by certified cardiac technicians and trainees.
31-11-55.1. Opioid antagonists administered by first responder to save life of person experiencing opioid related overdose.

ARTICLE 1

GENERAL PROVISIONS

31-11-8. Liability of persons rendering emergency care; liability of physicians advising ambulance service pursuant to Code Section 31-11-50; limitation to gratuitous services.

Law reviews. — For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

JUDICIAL DECISIONS

County and ambulance crew members entitled to immunity.

In a case in which a plaintiff sued a county to recover for injuries that the plaintiff allegedly sustained when a county-operated ambulance was involved in a collision while transporting the plaintiff to a local hospital, the trial court correctly ruled that O.C.G.A. § 31-11-8 was controlling in the case and that the county was entitled to statutory immunity thereunder; the undisputed evidence showed that the emergency medical technicians did not have access to an X-ray machine at the scene and could not accurately exclude the possibility that the plaintiff had internal injuries or fractures that required immediate care. Anderson v. Tattnall County, 318 Ga. App. 877, 734 S.E.2d 843 (2012).

Cited in Abdel-Samed v. Dailey, 294 Ga. 758, 755 S.E.2d 805 (2014).

ARTICLE 3

PERSONNEL

31-11-51. Certification and recertification of emergency medical technicians; rules and regulations; use of conviction data in licensing decisions.

(a) As used in this Code section, the term "conviction data" means a record of a finding or verdict of guilty or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The board shall, by regulation, authorize the department to establish procedures and standards for the licensing of emergency medical services personnel. The department shall succeed to all rules and regulations, policies, procedures, and administrative orders of the composite board which were in effect on December 31, 2001, and which relate to the functions transferred to the department by this chapter. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law.

(c) In reviewing applicants for initial licensure of emergency medical services personnel, the department shall be authorized pursuant to this Code section to obtain conviction data with respect to such applicants for the purposes of determining the suitability of the applicant for licensure.

(d) The department shall by rule or regulation, consistent with the requirements of this subsection, establish a procedure for requesting a fingerprint based criminal history records check from the center and the Federal Bureau of Investigation. Fingerprints shall be in such form and of such quality as prescribed by the center and under standards adopted by the Federal Bureau of Investigation. Fees may be charged as necessary to cover the cost of the records search. An applicant may request that a criminal history records check be conducted by a state or local law enforcement agency or by a private vendor approved by the department. Fees for criminal history records checks shall be paid by the applicant to the entity processing the request at the time such request is made. The state or local law enforcement agency or private vendor shall remit payment to the center in such amount as required by the center for conducting a criminal history records check. The department shall accept a criminal history records check whether such request is made through a state or local law enforcement agency or through a private vendor approved by the department. Upon receipt of an authorized request, the center shall promptly cause such criminal records search to be conducted. The center shall notify the department

in writing of any finding of disqualifying information, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding.

(e) Conviction data received by the department or a state or local law enforcement agency shall be privileged and shall not be a public record or disclosed to any person. Conviction data shall be maintained by the department and the state or local law enforcement pursuant to laws regarding such records and the rules and regulations of the center and the Federal Bureau of Investigation. Penalties for the unauthorized release or disclosure of conviction data shall be as prescribed by law or rule or regulation of the center or Federal Bureau of Investigation.

(f) The center, the department, or any law enforcement agency, or the employees of any such entities, shall neither be responsible for the accuracy of information provided pursuant to this Code section nor be liable for defamation, invasion of privacy, negligence, or any other claim relating to or arising from the dissemination of information pursuant to this Code section. (Code 1933, § 88-3112.1, enacted by Ga. L. 1977, p. 281, § 2; Ga. L. 2001, p. 1145, § 2; Ga. L. 2011, p. 539, § 2/SB 76; Ga. L. 2012, p. 83, § 4/HB 247; Ga. L. 2013, p. 141, § 31/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "this subsection" for "this paragraph" in the first sentence of subsection (d).

31-11-53. Services which may be rendered by certified emergency medical technicians and trainees.

(a) Upon certification by the department, emergency medical technicians may do any of the following:

(1) Render first-aid and resuscitation services as taught in the United States Department of Transportation basic training courses for emergency medical technicians or an equivalent course approved by the department; and

(2) Upon the order of a duly licensed physician, administer approved intravenous solutions and opioid antagonists.

(b) While in training preparatory to becoming certified, emergency medical technician trainees may perform any of the functions specified in this Code section under the direct supervision of a duly licensed physician or a registered nurse. (Code 1933, § 88-3112.3, enacted by Ga. L. 1977, p. 281, § 4; Ga. L. 2014, p. 683, § 2-3/HB 965.)

The 2014 amendment, effective April 24, 2014, added "and opioid antagonists" at the end of paragraph (a)(2). See editor's notes for applicability.

Editor's notes. — Ga. L. 2014, p. 683, § 2-1/HB 965, not codified by the General Assembly, provides:

"WHEREAS, Naloxone is an opioid an-

tagonist developed to counter the effects of opiate overdose, specifically the life threatening depression of the central nervous and respiratory systems; and

"WHEREAS, Naloxone is clinically administered via intramuscular, intravenous, or subcutaneous injection; and

"WHEREAS, Naloxone is administered outside of a clinical setting or facility intranasally via nasal atomizer; and

"WHEREAS, the American Medical Association supported the lay administration of this life saving drug in 2012; and

"WHEREAS, similar Naloxone access laws have reversed more than 10,000 opioid overdoses by lay people in other states; and

"WHEREAS, the American Medical Association acknowledged that 'fatalities caused by opioid overdose can devastate families and communities, and we must do more to prevent these unnecessary deaths'; and

"WHEREAS, the National Institutes of Health found that Naloxone 'lacks any psychoactive or addictive qualities ... without any potential for abuse ... [and] medical side effects or other problematic unintended consequences associated with Naloxone have not been reported'; and

"WHEREAS, any administration of Naloxone to an individual experiencing an opioid overdose must be followed by professional medical attention and treatment."

Ga. L. 2014, p. 683, § 3-1/HB 965, not codified by the General Assembly, provides, in part, that Parts I and II of this Act shall apply to all acts committed on or after April 24, 2014.

31-11-54. Services which may be rendered by paramedics and paramedic trainees.

(a) Upon certification by the department, paramedics may perform any service that a cardiac technician is permitted to perform. In addition, upon the order of a duly licensed physician and subject to the conditions set forth in paragraph (2) of subsection (a) of Code Section 31-11-55, paramedics may perform any other procedures which they have been both trained and certified to perform, including, but not limited to:

(1) Administration of parenteral injections of diuretics, anticonvulsants, hypertonic glucose, antihistamines, bronchodilators, emetics, narcotic antagonists, and others, and administration of opioid antagonists;

(2) Cardioversion; and

(3) Endotracheal suction.

(b) While in training preparatory to becoming certified, paramedic trainees may perform any of the functions specified in this Code section under the direct supervision of a duly licensed physician, a registered nurse, or an approved paramedic clinical preceptor. (Code 1933, § 88-3112.5, enacted by Ga. L. 1977, p. 281, § 6; Ga. L. 1988, p. 1923, § 4; Ga. L. 1989, p. 1782, § 2; Ga. L. 2001, p. 1145, § 4; Ga. L. 2014, p. 683, § 2-4/HB 965.)

The 2014 amendment, effective April 24, 2014, added ", and administration of opioid antagonists" at the end of paragraph (a)(1) and substituted

"Endotracheal suction" for "Gastric suction by intubation" in paragraph (a)(3). See editor's notes for applicability.

Editor's notes. — Ga. L. 2014, p. 683, § 2-1/HB 965, not codified by the General Assembly, provides:

"WHEREAS, Naloxone is an opioid antagonist developed to counter the effects of opiate overdose, specifically the life threatening depression of the central nervous and respiratory systems; and

"WHEREAS, Naloxone is clinically administered via intramuscular, intravenous, or subcutaneous injection; and

"WHEREAS, Naloxone is administered outside of a clinical setting or facility intranasally via nasal atomizer; and

"WHEREAS, the American Medical Association supported the lay administration of this life saving drug in 2012; and

"WHEREAS, similar Naloxone access laws have reversed more than 10,000 opioid overdoses by lay people in other states; and

"WHEREAS, the American Medical Association acknowledged that 'fatalities caused by opioid overdose can devastate families and communities, and we must do more to prevent these unnecessary deaths'; and

"WHEREAS, the National Institutes of Health found that Naloxone 'lacks any psychoactive or addictive qualities ... without any potential for abuse ... [and] medical side effects or other problematic unintended consequences associated with Naloxone have not been reported'; and

"WHEREAS, any administration of Naloxone to an individual experiencing an opioid overdose must be followed by professional medical attention and treatment."

Ga. L. 2014, p. 683, § 3-1/HB 965, not codified by the General Assembly, provides, in part, that Parts I and II of this Act shall apply to all acts committed on or after April 24, 2014.

31-11-55. Services which may be rendered by certified cardiac technicians and trainees.

(a) Upon certification by the department, cardiac technicians may do any of the following:

(1) Render first-aid and resuscitation services;

(2) Upon the order of a duly licensed physician and as recommended by the Georgia Emergency Medical Services Advisory Council and approved by the department:

(A) Perform cardiopulmonary resuscitation and defibrillation in a hemodynamically unstable patient;

(B) Administer approved intravenous solutions;

(C) Administer parenteral injections of antiarrhythmic agents, vagolytic agents, chronotropic agents, alkalizing agents, analgesic agents, and vasopressor agents or administer opioid antagonists; and

(D) Perform pulmonary ventilation by esophageal airway and endotracheal intubation.

(b) While in training preparatory to becoming certified, cardiac technician trainees may perform any of the functions specified in this Code section under the direct supervision of a duly licensed physician or a registered nurse. (Code 1933, § 88-3112.4, enacted by Ga. L. 1977, p. 281, § 5; Ga. L. 2001, p. 1145, § 5; Ga. L. 2014, p. 683, § 2-5/HB 965.)

The 2014 amendment, effective April 24, 2014, substituted "Georgia Emergency Medical Services" for "Emergency Health Services" in paragraph (a)(2); substituted "hemodynamically unstable" for "pulseless, nonbreathing" in subparagraph (a)(2)(A); and added "or administer opioid antagonists" in subparagraph (a)(2)(C). See editor's notes for applicability.

Editor's notes. — Ga. L. 2014, p. 683, § 2-1/HB 965, not codified by the General Assembly, provides:

"WHEREAS, Naloxone is an opioid antagonist developed to counter the effects of opiate overdose, specifically the life threatening depression of the central nervous and respiratory systems; and

"WHEREAS, Naloxone is clinically administered via intramuscular, intravenous, or subcutaneous injection; and

"WHEREAS, Naloxone is administered outside of a clinical setting or facility intranasally via nasal atomizer; and

"WHEREAS, the American Medical Association supported the lay administration of this life saving drug in 2012; and

"WHEREAS, similar Naloxone access laws have reversed more than 10,000 opioid overdoses by lay people in other states; and

"WHEREAS, the American Medical Association acknowledged that 'fatalities caused by opioid overdose can devastate families and communities, and we must do more to prevent these unnecessary deaths'; and

"WHEREAS, the National Institutes of Health found that Naloxone 'lacks any psychoactive or addictive qualities ... without any potential for abuse ... [and] medical side effects or other problematic unintended consequences associated with Naloxone have not been reported'; and

"WHEREAS, any administration of Naloxone to an individual experiencing an opioid overdose must be followed by professional medical attention and treatment."

Ga. L. 2014, p. 683, § 3-1/HB 965, not codified by the General Assembly, provides, in part, that Parts I and II of this Act shall apply to all acts committed on or after April 24, 2014.

31-11-55.1. Opioid antagonists administered by first responder to save life of person experiencing opioid related overdose.

(a) As used in this Code section, the term:

(1) "First responder" means any person or agency who provides on-site care until the arrival of a duly licensed ambulance service. This shall include, but not be limited to, persons who routinely respond to calls for assistance through an affiliation with law enforcement agencies, fire departments, and rescue agencies.

(2) "Opioid antagonist" means any drug that binds to opioid receptors and blocks or inhibits the effects of opioids acting on those receptors and that is approved by the federal Food and Drug Administration for the treatment of an opioid related overdose.

(3) "Opioid related overdose" means an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, resulting from the consumption or use of an opioid or another substance with which an opioid was combined or that a layperson would reasonably believe to be resulting from the consumption or use of an opioid or another substance with which an opioid was combined.

(b) An opioid antagonist may be administered or provided by any first responder for the purpose of saving the life of a person experiencing an opioid related overdose. In order to ensure public health and safety:

(1) All first responders who have access to or maintain an opioid antagonist obtain appropriate training as set forth in the rules and regulations of the Department of Public Health;

(2) All law enforcement agencies, fire departments, rescue agencies, and other similar entities shall notify the appropriate emergency medical services system of the possession and maintenance of opioid antagonists by its personnel; and

(3) Within a reasonable period of time, all first responders who administer or provide an opioid antagonist shall make available a printed or electronically stored report to the licensed ambulance service which transports the patient.

(c) A pharmacy licensed in this state may issue opioid antagonists to first responders for use pursuant to this Code section in the same manner and subject to the same requirements as provided in Code Section 26-4-116.

(d) Any first responder who gratuitously and in good faith renders emergency care or treatment by administering or providing an opioid antagonist shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts without gross negligence or intent to harm or as an ordinary reasonably prudent person would have acted under the same or similar circumstances, even if such individual does so without benefit of the appropriate training. This subsection includes paid persons who extend care or treatment without expectation of remuneration from the patient or victim for receiving the opioid antagonist. (Code 1981, § 31-11-55.1, enacted by Ga. L. 2014, p. 683, § 2-6/HB 965.)

Effective date. — This Code section became effective April 24, 2014. See editor's notes for applicability.

Editor's notes. — Ga. L. 2014, p. 683, § 2-1/HB 965, not codified by the General Assembly, provides:

"WHEREAS, Naloxone is an opioid antagonist developed to counter the effects of opiate overdose, specifically the life threatening depression of the central nervous and respiratory systems; and

"WHEREAS, Naloxone is clinically administered via intramuscular, intravenous, or subcutaneous injection; and

"WHEREAS, Naloxone is administered outside of a clinical setting or facility intranasally via nasal atomizer; and

"WHEREAS, the American Medical Association supported the lay administration of this life saving drug in 2012; and

"WHEREAS, similar Naloxone access laws have reversed more than 10,000 opioid overdoses by lay people in other states; and

"WHEREAS, the American Medical Association acknowledged that 'fatalities caused by opioid overdose can devastate families and communities, and we must

do more to prevent these unnecessary deaths'; and

"WHEREAS, the National Institutes of Health found that Naloxone 'lacks any psychoactive or addictive qualities ... without any potential for abuse ... [and] medical side effects or other problematic unintended consequences associated with Naloxone have not been reported'; and

"WHEREAS, any administration of Naloxone to an individual experiencing an opioid overdose must be followed by professional medical attention and treatment."

Ga. L. 2014, p. 683, § 3-1/HB 965, not codified by the General Assembly, provides, in part, that Parts I and II of this Act shall apply to all acts committed on or after April 24, 2014.

CHAPTER 12

CONTROL OF HAZARDOUS CONDITIONS, PREVENTABLE DISEASES, AND METABOLIC DISORDERS

Sec.
31-12-3.2. Meningococcal disease; vaccinations; disclosures.

31-12-3.2. Meningococcal disease; vaccinations; disclosures.

(a) Every public and nonpublic postsecondary educational institution shall provide to each newly admitted freshman or matriculated student residing in campus housing as defined by the postsecondary educational institution or to the student's parent or guardian if the student is a minor, the following information:

(1) Meningococcal disease is a serious disease that can lead to death within only a few hours of onset; one in ten cases is fatal; and one in seven survivors of the disease is left with a severe disability, such as the loss of a limb, developmental disability, paralysis, deafness, or seizures;

(2) Meningococcal disease is contagious but a largely preventable infection of the spinal cord fluid and the fluid that surrounds the brain;

(3) Scientific evidence suggests that college students living in dormitory facilities are at a moderately increased risk of contracting meningococcal disease; and

(4) Immunization against meningococcal disease will decrease the risk of the disease.

(b) In accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control

and Prevention, newly admitted students who are 18 years of age or older residing in campus housing as defined by the postsecondary educational institution or residing in sorority or fraternity houses shall be required to sign a document provided by the postsecondary educational institution stating that he or she has received vaccination against meningococcal disease not more than five years prior to such admittance or reviewed the information provided as required by subsection (a) of this Code section. If a student is a minor, only a parent or guardian may sign such document.

(c) Nothing in this Code section shall be construed to require any postsecondary educational institution to provide or pay for vaccinations of students against meningococcal disease.

(d) Any postsecondary educational institution that has made a reasonable effort to comply with this Code section shall not be liable for damages or injuries sustained by a student by reason of such student's contracting meningococcal disease. (Code 1981, § 31-12-3.2, enacted by Ga. L. 2003, p. 292, § 1; Ga. L. 2009, p. 453, § 3-6/HB 228; Ga. L. 2015, p. 297, § 1/HB 504.)

The 2015 amendment, effective July 1, 2015, in subsection (b), in the first sentence, substituted "In accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, newly admitted students" for "Students" at the beginning, inserted "residing in campus housing as defined by the postsecondary educational institution or residing in sorority or fraternity houses", deleted "a" following "she has received", and inserted "not more than five years prior to such admittance" near the end.

CHAPTER 17

CONTROL OF VENEREAL DISEASE

Sec.
31-17-4.2. HIV and Syphilis Pregnancy Screening.

31-17-4.2. HIV and Syphilis Pregnancy Screening.

(a) This Code section shall be known and may be cited as the "Georgia HIV/Syphilis Pregnancy Screening Act of 2015."

(b) Every physician and health care provider who assumes responsibility for the prenatal care of a pregnant woman during gestation and at delivery shall be required to test such pregnant woman for HIV and syphilis except in cases where the woman refuses the testing. Additionally, every physician and health care provider who provides prenatal

care of a pregnant woman during the third trimester of gestation shall offer to test such pregnant woman for HIV and syphilis at the time of first examination during that trimester or as soon as possible thereafter, regardless of whether such testing was performed during the first two trimesters of her pregnancy.

(c) If at the time of delivery there is no written evidence that an HIV test or a syphilis test has been performed, the physician or other health care provider in attendance at the delivery shall order that a test for HIV, syphilis, or both be administered at the time of the delivery except in cases where the woman refuses the testing; provided, however, that if available documentation indicates that a test for HIV and syphilis was already performed during the third trimester of her pregnancy in accordance with subsection (b) of this Code section, and the woman does not disclose when questioned any activities posing a risk for infection with HIV or syphilis occurring more recently than would have been detected by such test, the physician or health care provider in attendance at the delivery is not required to order such additional test.

(d) The woman shall be informed of the test to be conducted and her right to refuse. A pregnant woman shall submit to an HIV test and a syphilis test pursuant to this Code section unless she specifically declines. If the woman tests positive for HIV or syphilis, counseling services provided by the Department of Public Health shall be made available to her and she shall be referred to appropriate medical care providers for herself and her child.

(e) If for any reason the pregnant woman is not tested for HIV and syphilis, that fact shall be recorded in the patient's records, which, if based upon the refusal of the patient, shall relieve the physician or other health care provider of any other responsibility under this Code section.

(f) The Department of Public Health shall be authorized to promulgate rules and regulations for the purpose of administering the requirements under this Code section. (Code 1981, § 31-17-4.2, enacted by Ga. L. 2007, p. 173, § 1/HB 429; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2015, p. 1346, § 1/HB 436.)

The 2015 amendment, effective July 1, 2015, substituted "'Georgia HIV/Syphilis Pregnancy Screening Act of 2015'" for "'Georgia HIV Pregnancy Screening Act of 2007'" in subsection (a); in subsection (b), in the first sentence, substituted "care of a pregnant woman" for "care of pregnant women" near the middle, substituted "test such pregnant woman for HIV and syphilis" for "test pregnant women for HIV" in the middle, and added the second sentence; in subsection (c), inserted "or a syphilis test", substituted "test for HIV, syphilis, or both be administered" for "sample of the woman's blood be taken or a rapid oral test administered", and added the proviso; in subsection (d), inserted "and a syphilis test" in the first sentence,

and inserted "for HIV or syphilis" in the second sentence; and inserted "and syphilis" in subsection (e).

CHAPTER 17A

CONTROL OF HIV

Cross references. — Child committing delinquent act constituting AIDS transmission crime including testing and reporting, § 15-11-603. Confidential nature of AIDS information, § 24-12-20. Disclosure of AIDS confidential information, § 24-12-21.

CHAPTER 22

CLINICAL LABORATORIES

Sec.
31-22-9.2. HIV tests — Report of positive results; notification; counseling; violations; exception for insurance coverage; exposure of health care provider.

Sec.

31-22-9.1. HIV tests — Who may perform test.

Cross references. — Confidential nature of AIDS information, § 24-12-20.

31-22-9.2. HIV tests — Report of positive results; notification; counseling; violations; exception for insurance coverage; exposure of health care provider.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for that term in Code Section 31-22-9.1.

(b) Reserved.

(c) Unless exempted under this Code section, each health care provider who orders an HIV test for any person shall do so only after notifying the person to be tested. Unless exempted under this subsection, the person to be tested shall have the opportunity to refuse the test. The provisions of this subsection shall not be required if the person is required to submit to an HIV test pursuant to Code Section 15-11-603, 17-10-15, 31-17-4.2, 31-17A-3, 42-5-52.1, or 42-9-42.1. The provisions of this subsection shall not be required if the person is a minor or incompetent and the parent or guardian thereof permits the

test after compliance with this subsection. The provisions of this subsection shall not be required if the person is unconscious, temporarily incompetent, or comatose and the next of kin permits the test after compliance with this subsection. The provisions of this subsection shall not apply to emergency or life-threatening situations. The provisions of this subsection shall not apply if the physician ordering the test is of the opinion that the person to be tested is in such a medical or emotional state that disclosure of the test would be injurious to the person's health. The provisions of this subsection shall only be required prior to drawing the body fluids required for the HIV test and shall not be required for each test performed upon that fluid sample.

(d) The health care provider ordering an HIV test shall provide medically appropriate counseling to the person tested with regard to the test results. Such medically appropriate counseling shall only be required when the last confirmatory test has been completed.

(e) The criminal penalty provided in Code Section 31-22-13 shall not apply to a violation of subsection (c), (d), or (g) of this Code section. The statute of limitations for any action alleging a violation of this Code section shall be two years from the date of the alleged violation.

(f) The provisions of this Code section shall not apply to situations in which an HIV test is ordered or required in connection with insurance coverage, provided that the person to be tested or the appropriate representative of that person has agreed to have the test administered under such procedures as may be established by the Commissioner of Insurance after consultation with the Department of Community Health.

(g) Notwithstanding the other provisions of this Code section, when exposure of a health care provider to any body fluids of a patient occurs in such a manner as to create any risk that such provider might become an HIV infected person if the patient were an HIV infected person, according to current infectious disease guidelines of the Centers for Disease Control and Prevention or according to infectious disease standards of the health care facility where the exposure occurred, a health care provider otherwise authorized to order an HIV test shall be authorized to order any HIV test on such patient and obtain the results thereof:

(1) If the patient or the patient's representative, if the patient is a minor, otherwise incompetent, or unconscious, does not refuse the test after being notified that the test is to be ordered and after having been provided an opportunity to refuse the test; or

(2) If the patient or representative refuses the test, following compliance with paragraph (1) of this subsection, when at least one other health care provider who is otherwise authorized to order an

HIV test concurs in writing to the testing, the patient is informed of the results of the test and is provided counseling with regard to those results, and the occurrence of that test is not made a part of the patient's medical records, where the test results are negative, without the patient's consent. (Code 1981, § 31-22-9.2, enacted by Ga. L. 1988, p. 1799, § 8; Ga. L. 1990, p. 705, §§ 2, 3; Ga. L. 2000, p. 20, § 20; Ga. L. 2006, p. 72, § 31/SB 465; Ga. L. 2007, p. 173, § 2/HB 429; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2013, p. 294, § 4-43/HB 242; Ga. L. 2015, p. 1346, § 2/HB 436.)

The 2013 amendment, effective January 1, 2014, substituted "Code Section 15-11-603" for "Code Section 15-11-66.1" in the third sentence of subsection (c). See editor's notes for applicability.

The 2015 amendment, effective July 1, 2015, substituted "notifying the person" for "counseling the person" in the first sentence of subsection (c); and substituted "provided an opportunity" for "provided counseling and an opportunity" near the end of paragraph (g)(1).

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

CHAPTER 30

REPORTS ON VETERANS EXPOSED TO AGENT ORANGE

Delayed effective date. — Code Section 31-30-9 provides that this chapter shall become effective when and to the extent that funds are appropriated and available to the Department of Human Resources (now Department of Community Health) under an appropriation which specifically refers to this chapter and provides that it is intended for the implementation of this chapter. Funds were not appropriated at the 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, or 2015 sessions of the General Assembly.

CHAPTER 33

HEALTH RECORDS

Sec.
31-33-3. Costs of copying and mailing; patient's rights as to records.

31-33-2. Furnishing copy of records to patient, provider, or other authorized person.

JUDICIAL DECISIONS

Patient's authorization required. — Trial court did not abuse the court's discretion in denying the doctors' copies of records of former patients in the absence of patient authorizations as the new practice owned the records. Gerguis v. Statesboro HMA Medical Group, LLC, No. A14A1616, 2015 Ga. App. LEXIS 130 (Mar. 18, 2015).

31-33-3. Costs of copying and mailing; patient's rights as to records.

(a) The party requesting the patient's records shall be responsible to the provider for the costs of copying and mailing the patient's record. A charge of up to $20.00 may be collected for search, retrieval, and other direct administrative costs related to compliance with the request under this chapter. A fee for certifying the medical records may also be charged not to exceed $7.50 for each record certified. The actual cost of postage incurred in mailing the requested records may also be charged. In addition, copying costs for a record which is in paper form shall not exceed $.75 per page for the first 20 pages of the patient's records which are copied; $.65 per page for pages 21 through 100; and $.50 for each page copied in excess of 100 pages. All of the fees allowed by this Code section may be adjusted annually in accordance with the medical component of the consumer price index. The Department of Community Health shall be responsible for calculating this annual adjustment, which will become effective on July 1 of each year. To the extent the request for medical records includes portions of records which are not in paper form, including but not limited to radiology films, models, or fetal monitoring strips, the provider shall be entitled to recover the full reasonable cost of such reproduction. Payment of such costs may be required by the provider prior to the records being furnished. This subsection shall not apply to records requested in order to make or complete an application for a disability benefits program.

(b) The rights granted to a patient or other person under this chapter are in addition to any other rights such patient or person may have relating to access to a patient's records; however, nothing in this

chapter shall be construed as granting to a patient or person any right of ownership in the records, as such records are owned by and are the property of the provider. (Code 1981, § 31-32-3, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-3, as redesignated by Ga. L. 1985, p. 149, § 31; Ga. L. 2001, p. 1157, § 2; Ga. L. 2015, p. 949, § 1/HB 385.)

The 2015 amendment, effective July 1, 2015, substituted "Department of Community Health" for "Office of Planning and Budget" in the seventh sentence of subsection (a).

CHAPTER 38

TANNING FACILITIES

Sec.
31-38-11. Variance permitted.
31-38-12. Effect of chapter on administrator; administrator's immunity from liability.

31-38-11. Variance permitted.

Any tanning facility which finds that it is not possible to comply with Code Section 31-38-4 may apply to the Attorney General for a variance from the requirements of Code Section 31-38-4. Any such variance granted by the Attorney General shall be in writing and shall be drawn as narrowly as possible. (Code 1981, § 31-38-11, enacted by Ga. L. 1991, p. 1411, § 2; Ga. L. 2015, p. 1088, § 19/SB 148.)

The 2015 amendment, effective July 1, 2015, in this Code section, substituted "Attorney General" for "administrator appointed pursuant to subsection (a) of Code Section 10-1-395" in the first sentence and substituted "Attorney General" for "administrator" in the second sentence.

31-38-12. Effect of chapter on administrator; administrator's immunity from liability.

Nothing contained in this chapter shall be construed as imposing any duty, requirement, or enforcement authority upon the Attorney General except as described in Code Section 31-38-11, provided that nothing contained in this chapter shall be construed in any manner as limiting the Attorney General from exercising any of his or her duties, powers, or authority under any other law. The Attorney General shall not be liable to any person for any reason as a result of granting or failing to grant any variance under Code Section 31-38-11. (Code 1981, § 31-38-12, enacted by Ga. L. 1991, p. 1411, § 2; Ga. L. 2015, p. 1088, § 20/SB 148.)

The 2015 amendment, effective July 1, 2015, in this Code section, substituted "Attorney General" for "administrator appointed pursuant to Code Section 10-1-395" and substituted "his or her duties" for "his duties" in the first sentence and substituted "Attorney General" for "administrator" in the first and second sentences.

CHAPTER 39

CARDIOPULMONARY RESUSCITATION

Sec.
31-39-4. Persons authorized to issue order not to resuscitate.

31-39-4. Persons authorized to issue order not to resuscitate.

(a) It shall be lawful for the attending physician to issue an order not to resuscitate pursuant to the requirements of this chapter. Any written order issued by the attending physician using the term "do not resuscitate," "DNR," "order not to resuscitate," "do not attempt resuscitation," "DNAR," "no code," "allow natural death," "AND," "order to allow natural death," or substantially similar language in the patient's chart shall constitute a legally sufficient order and shall authorize a physician, health care professional, nurse, physician assistant, caregiver, or emergency medical technician to withhold or withdraw cardiopulmonary resuscitation. Such an order shall remain effective, whether or not the patient is receiving treatment from or is a resident of a health care facility, until the order is canceled as provided in Code Section 31-39-5 or until consent for such order is revoked as provided in Code Section 31-39-6, whichever occurs earlier. An attending physician who has issued such an order and who transfers care of the patient to another physician shall inform the receiving physician and the health care facility, if applicable, of the order.

(b) An adult person with decision-making capacity may consent orally or in writing to an order not to resuscitate and its implementation at a present or future date, regardless of that person's mental or physical condition on such future date. If the attending physician determines at any time that an order not to resuscitate issued at the request of the patient is no longer appropriate because the patient's medical condition has improved, the physician shall immediately notify the patient.

(c) The appropriate authorized person may, after being informed of the provisions of this Code section, consent orally or in writing to an order not to resuscitate for an adult candidate for nonresuscitation;

provided, however, that such consent is based in good faith upon what such authorized person determines such candidate for nonresuscitation would have wanted had such candidate for nonresuscitation understood the circumstances under which such order is being considered. Where such authorized person is an agent under a durable power of attorney for health care or a health care agent under an advance directive for health care appointed pursuant to Chapter 32 of this title or where a Physician Orders for Life-Sustaining Treatment form with a code status of "do not resuscitate" or its equivalent has been executed in accordance with Code Section 31-1-14 by an authorized person who is an agent under a durable power of attorney for health care or a health care agent under an advance directive for health care appointed pursuant to Chapter 32 of this title, the attending physician may issue an order not to resuscitate a candidate for nonresuscitation pursuant to the requirements of this chapter without the concurrence of another physician, notwithstanding the provisions of paragraph (4) of Code Section 31-39-2.

(d) Any parent may consent orally or in writing to an order not to resuscitate for his or her minor child when such child is a candidate for nonresuscitation. If in the opinion of the attending physician the minor is of sufficient maturity to understand the nature and effect of an order not to resuscitate, then no such order shall be valid without the assent of such minor.

(e) If none of the persons specified in subsections (b), (c), and (d) of this Code section is reasonably available or competent to make a decision regarding an order not to resuscitate, an attending physician may issue an order not to resuscitate for a patient, provided that:

(1) Such physician determines with the concurrence of a second physician, in writing in the patient's medical record, that such patient is a candidate for nonresuscitation;

(2) An ethics committee or similar panel, as designated by the health care facility, concurs in the opinion of the attending physician and the concurring physician that the patient is a candidate for nonresuscitation; and

(3) The patient is receiving inpatient or outpatient treatment from or is a resident of a health care facility other than a hospice or a home health agency. (Code 1981, § 31-39-4, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1; Ga. L. 1995, p. 10, § 31; Ga. L. 1995, p. 722, §§ 2, 2.1; Ga. L. 2009, p. 298, § 1/HB 69; Ga. L. 2011, p. 379, § 2/HB 275; Ga. L. 2015, p. 305, § 2/SB 109.)

The 2015 amendment, effective July 1, 2015, in subsection (a), in the second sentence, inserted "'do not attempt resuscitation,' 'DNAR,'" and inserted "'allow natural death,' 'AND,' 'order to allow natural death,'"; and in subsection (c), in the

second sentence, inserted "a" following "health care or" and inserted the language beginning with "or where a Physician Orders for" and ending with "pursuant to Chapter 32 of this title".

CHAPTER 40

TATTOO STUDIOS

31-40-1. Definitions.

RESEARCH REFERENCES

ALR. — Regulation of business of tattooing, 67 ALR6th 395.

31-40-5. Rules and regulations.

RESEARCH REFERENCES

ALR. — Regulation of business of tattooing, 67 ALR6th 395.

CHAPTER 41

LEAD POISONING PREVENTION

Article 1
General Provisions

Sec.
31-41-3. Definitions.

ARTICLE 1

GENERAL PROVISIONS

31-41-3. Definitions.

As used in this chapter, the term:

(1) "Abatement" means any set of measures designed to eliminate lead-based paint hazards, in accordance with standards developed by the board, including:

(A) Removal of lead-based paint and lead contaminated dust, the permanent containment or encapsulation of lead-based paint,

the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

(B) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(2) "Accessible surface" means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

(2.1) "Board" means the Board of Natural Resources of the State of Georgia.

(2.2) "Child-occupied facility" means a building or portion of a building constructed prior to 1978, visited by the same child, six years of age or under, on at least two different days within the same week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours. Child-occupied facilities include, but are not limited to, child care learning centers, preschools, and kindergarten facilities.

(3) "Department" means the Department of Natural Resources.

(4) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(5) "Impact surface" means an interior or exterior surface or fixture that is subject to damage by repeated impacts, for example, certain parts of door frames.

(6) "Inspection" means a surface by surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

(7) "Interim controls" means a measure or set of measures as specified by the board taken by the owner of a structure that are designed to control temporarily human exposure or likely exposure to lead-based paint hazards.

(8) "Lead-based paint" means paint or other surface coatings that contain lead in excess of limits established by board regulation.

(9) "Lead-based paint activities" means the inspection and assessment of lead hazards and the planning, implementation, and inspection of interim controls, renovation, and abatement activities at target housing and child-occupied facilities.

(10) "Lead-based paint hazard" means any condition that causes exposure to lead from lead contaminated dust, lead contaminated soil, or lead contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would

result in adverse human health effects as established pursuant to Section 403 of the Toxic Substances Control Act.

(11) "Lead contaminated dust" means surface dust in residential dwellings or in other facilities occupied or regularly used by children that contains an area or mass concentration of lead in excess of levels determined pursuant to Section 403 of the Toxic Substances Control Act.

(12) "Lead contaminated soil" means bare soil on residential real property or on other sites frequented by children that contains lead at or in excess of levels determined to be hazardous to human health pursuant to Section 403 of the Toxic Substances Control Act.

(13) "Lead contaminated waste" means any discarded material resulting from an abatement activity that fails the toxicity characteristics determined by the department.

(13.1) "Lead dust sampling technician" means an individual employed to perform lead dust clearance sampling for renovation as determined by the department.

(14) "Lead firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that employs or contracts with persons to perform lead-based paint activities.

(15) "Lead inspector" means a person who conducts inspections to determine the presence of lead-based paint or lead-based paint hazards.

(16) "Lead project designer" means a person who plans or designs abatement activities and interim controls.

(17) "Lead risk assessor" means a person who conducts on-site risk assessments of lead hazards.

(18) "Lead supervisor" means a person who supervises and conducts abatement of lead-based paint hazards.

(19) "Lead worker" means any person performing lead hazard reduction activities.

(19.1) "Minor repair and maintenance activities" means activities that disrupt six square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted as determined by the department are used or where the work does not involve window replacement or demolition of painted surface areas. Jobs performed in the same room within 30 days are considered the same job for purposes of this definition.

(19.2) "Renovation" means the modification of any target housing or child-occupied facility structure or portion thereof, that results in

the disturbance of painted surfaces unless that activity is performed as part of an abatement activity. Renovation includes but is not limited to the removal, modification, re-coating, or repair of painted surfaces or painted components; the removal of building components; weatherization projects; and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building into target housing or a child-occupied facility is a renovation. Such term shall not include minor repair and maintenance activities.

(19.3) "Renovation firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity that employs or contracts with persons to perform lead-based paint renovations as determined by the department.

(19.4) "Renovator" means an individual who either performs or directs workers who perform renovations.

(20) "Risk assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in or on any structure or site, including:

(A) Information gathering regarding the age and history of the structure and the occupancy or other use by young children;

(B) Visual inspection;

(C) Limited wipe sampling or other environmental sampling techniques;

(D) Other activity as may be appropriate; and

(E) Provision of a report explaining the results of the investigation.

(21) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child or children age six years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling. (Code 1981, § 31-41-3, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 1998, p. 248, § 1; Ga. L. 2010, p. 531, § 6/SB 78; Ga. L. 2013, p. 135, § 12/HB 354.)

The 2013 amendment, effective July 1, 2013, substituted "child care learning centers" for "day-care centers" in the second sentence of paragraph (2.2).

CHAPTER 49

GEORGIA COUNCIL ON LUPUS EDUCATION AND AWARENESS

Sec.		Sec.	
31-49-1.	Legislative findings.	31-49-4.	Distribution of information.
31-49-2.	Creation of Council on Lupus Education and Awareness; membership; organization.	31-49-5.	Annual report.
31-49-3.	Duties and responsibilities of council.	31-49-6.	Donations.

Effective date. — This chapter became effective July 1, 2014.

31-49-1. Legislative findings.

The General Assembly finds and declares that it is estimated that as many as 55,000 Georgia residents suffer from lupus, a life-long autoimmune disease in which the immune system becomes unbalanced, causing inflammation, tissue damage, seizures, strokes, heart attacks, miscarriages, and organ failure. Although anyone can develop lupus, it strikes mostly women of childbearing age; African American, Hispanic, Asian, and Native American women are two to three times more likely than Caucasians to develop lupus. Lupus can be difficult to diagnose and often is misdiagnosed because the symptoms are similar to those of other illnesses. It is in the public interest for this state to establish an entity to develop and implement a comprehensive program to improve education and awareness about lupus for health care providers and the general public. (Code 1981, § 31-49-1, enacted by Ga. L. 2014, p. 397, § 2/SB 352.)

31-49-2. Creation of Council on Lupus Education and Awareness; membership; organization.

(a) There is created the Georgia Council on Lupus Education and Awareness within the Department of Community Health.

(b) The council shall consist of six members as follows:

(1) The commissioner of community health, or the commissioner's designee, as an ex officio member;

(2) Three members to be appointed by the Governor. The Governor shall appoint two members to serve for one year and one to serve for two years. Thereafter, successors to such initial appointees shall

serve for two years. Of these three members, one shall be a physician who treats patients with lupus and one shall be a lupus patient;

(3) One member to be appointed by the Speaker of the House of Representatives to serve for two years; and

(4) One member to be appointed by the Lieutenant Governor to serve for two years;

(c) All vacancies on the council shall be filled for the balance of the unexpired term in the same manner as the original appointment. A member of the council shall be eligible for reappointment.

(d) The members of the council shall serve without compensation but may be reimbursed for any expenses incurred by them in the performance of their duties, subject to the availability of funds.

(e) The council shall organize as soon as practicable after the appointment of its members and shall select a chairperson from among its members. (Code 1981, § 31-49-2, enacted by Ga. L. 2014, p. 397, § 2/SB 352.)

31-49-3. Duties and responsibilities of council.

(a) The council shall have the following duties and responsibilities:

(1) To initially investigate the level of education concerning lupus in this state; and

(2) Based on the results of its initial investigation pursuant to paragraph (1) of this Code section, to develop information on lupus endorsed by government agencies, including, but not limited to, the National Institutes of Health and the Centers for Disease Control and Prevention.

(b) The council shall develop a directory of lupus related health care services, which shall be made available on the department's website and shall include a list of health care providers specializing in the diagnosis and treatment of lupus. (Code 1981, § 31-49-3, enacted by Ga. L. 2014, p. 397, § 2/SB 352.)

31-49-4. Distribution of information.

(a) The department shall post the information developed by the council pursuant to paragraph (2) of subsection (a) of Code Section 31-49-3 on its website.

(b) Subject to appropriations or access to other private or public funds, the department may distribute such information to individuals with lupus, their family members, health care professionals, hospitals,

local health departments, schools, agencies on aging, employers, health plans, women's health groups, and nonprofit and community based organizations. (Code 1981, § 31-49-4, enacted by Ga. L. 2014, p. 397, § 2/SB 352.)

31-49-5. Annual report.

The council shall prepare annually a complete and detailed report to be submitted to the Governor, the chairperson of the House Committee on Health and Human Services, and the chairperson of the Senate Health and Human Services Committee detailing the activities of the council and may include any recommendations for legislative action it deems appropriate. (Code 1981, § 31-49-5, enacted by Ga. L. 2014, p. 397, § 2/SB 352.)

31-49-6. Donations.

The council may solicit and accept donations, gifts, grants, property, or matching funds from any public or private source for the use of the council in performing its functions under this chapter. (Code 1981, § 31-49-6, enacted by Ga. L. 2014, p. 397, § 2/SB 352.)

CHAPTER 50

COMMISSION ON MEDICAL CANNABIS

Sec.
31-50-1. (Repealed effective June 30, 2016) Creation.
31-50-2. (Repealed effective June 30, 2016) Members.
31-50-3. (Repealed effective June 30, 2016) Meetings; allowances.
31-50-4. (Repealed effective June 30, 2016) Duties; powers; authority.
31-50-5. Sunset.

Effective date. — This chapter became effective April 16, 2015.

Editor's notes. — Code Section 31-50-5 provides for the repeal of this chapter effective June 30, 2016.

Ga. L. 2015, p. 49, § 1-1/HB 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Haleigh's Hope Act.'"

31-50-1. (Repealed effective June 30, 2016) Creation.

(a) There is created the Georgia Commission on Medical Cannabis.

(b) As used in this chapter, the term "commission" means the Georgia Commission on Medical Cannabis. (Code 1981, § 31-50-1, enacted by Ga. L. 2015, p. 49, § 3-1/HB 1.)

Editor's notes. — Code Section 31-50-5 provides for the repeal of this Code section effective June 30, 2016.

31-50-2. (Repealed effective June 30, 2016) Members.

(a) The commission shall consist of 17 members. The commissioner of public health, the director of the Georgia Bureau of Investigation, the director of the Georgia Drugs and Narcotics Agency, the commissioner of agriculture, the chairperson of the Georgia Composite Medical Board, and the Governor's executive counsel shall be permanent members of the commission. The permanent members of the commission may designate another individual to serve in his or her stead. The remaining members of the commission shall be appointed by the Governor on or before July 1, 2015. The remaining members shall be:

(1) Two members of the Senate;

(2) Two members of the House of Representatives;

(3) A board certified hematologist-oncologist;

(4) A board certified neurologist;

(5) A board certified gastroenterologist;

(6) A board certified pharmacist;

(7) An attorney employed by the Prosecuting Attorneys' Council of the State of Georgia or a prosecuting attorney;

(8) A sheriff; and

(9) A police chief.

(b) In the event of death, resignation, disqualification, or removal for any reason of any member of the commission, the vacancy shall be filled in the same manner as the original appointment, and the successor shall serve for the unexpired term.

(c) Membership on the commission shall not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(d) The Governor shall designate a chairperson of the commission from among the members, which chairperson shall serve in that position at the pleasure of the Governor. The chairperson shall only vote to break a tie. The commission may elect such other officers and committees as it considers appropriate.

(e) The commission, with the approval of the Governor, may employ such professional, technical, or clerical personnel as deemed necessary to carry out the purposes of this chapter. The commission may create committees from among its membership as well as appoint other persons to serve in an advisory capacity to the commission in implementing this chapter.

(f) The commission shall be attached for administrative purposes only to the Department of Public Health in accordance with Code Section 50-4-3. The Department of Public Health may use any funds specifically appropriated to it to support the work of the commission. (Code 1981, § 31-50-2, enacted by Ga. L. 2015, p. 49, § 3-1/HB 1.)

Editor's notes. — Code Section 31-50-5 provides for the repeal of this Code section effective June 30, 2016.

31-50-3. (Repealed effective June 30, 2016) Meetings; allowances.

(a) The commission may conduct meetings at such places and times as it deems necessary or convenient to enable it to exercise fully and effectively its powers, perform its duties, and accomplish the objectives and purposes of this chapter. The commission shall hold meetings at the call of the chairperson.

(b) A quorum for transacting business shall be a majority of the members of the commission.

(c) Any legislative members of the commission shall receive the allowances provided for in Code Section 28-1-8. Citizen members shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance authorized for state employees. Members of the commission who are state officials, other than legislative members, or state employees shall receive no compensation for their services on the commission, but shall be reimbursed for expenses incurred in the performance of their duties as members of the commission in the same manner as reimbursements are made in their capacity as state officials or state employees. The funds necessary for the reimbursement of the expenses of state officials, other than legislative members, and state employees shall come from funds appropriated to or otherwise available to their respective departments. (Code 1981, § 31-50-3, enacted by Ga. L. 2015, p. 49, § 3-1/HB 1.)

Editor's notes. — Code Section 31-50-5 provides for the repeal of this Code section effective June 30, 2016.

31-50-4. (Repealed effective June 30, 2016) Duties; powers; authority.

(a) The commission shall have the following duties:

(1) To establish comprehensive recommendations regarding the potential regulation of medical cannabis in this state. Such recommendations shall include, without limitations, specification of the department or departments to have responsibility for the oversight of a state-sanctioned system related to medical cannabis. A detailed report, which shall be submitted no later than December 31, 2015, including a review of the conditions, needs, issues, and problems related to medical cannabis and any recommended action or proposed legislation which the commission deems necessary or appropriate shall be provided to the executive counsel of the Governor, the Office of Planning and Budget, and the chairpersons of the House Committee on Appropriations, the Senate Appropriations Committee, the House Committee on Judiciary, Non-civil, the Senate Judiciary, Non-civil Committee, the House Committee on Health and Human Services, and the Senate Health and Human Services Committee; and

(2) To evaluate and consider the best practices, experiences, and results of legislation in other states with regard to medical cannabis.

(b) The commission shall have the following powers:

(1) To evaluate how the laws and programs affecting medical cannabis should operate in this state;

(2) To request and receive data from and review the records of appropriate state agencies to the greatest extent allowed by state and federal law;

(3) To authorize entering into contracts or agreements through the commission's chairperson necessary or incidental to the performance of its duties;

(4) To establish rules and procedures for conducting the business of the commission; and

(5) To conduct studies, hold public meetings, collect data, or take any other action the commission deems necessary to fulfill its responsibilities.

(c) Subject to the availability of funds, the commission shall be authorized to retain the services of attorneys, consultants, subject matter experts, economists, budget analysts, data analysts, statisticians, and other individuals or organizations as determined appropriate by the commission. (Code 1981, § 31-50-4, enacted by Ga. L. 2015, p. 49, § 3-1/HB 1.)

Editor's notes. — Code Section 31-50-5 provides for the repeal of this Code section effective June 30, 2016.

31-50-5. Sunset.

This chapter shall stand repealed on June 30, 2016. (Code 1981, § 31-50-5, enacted by Ga. L. 2015, p. 49, § 3-1/HB 1.)

CHAPTER 51

CREATION OF LOW THC OIL RESEARCH PROGRAM

Sec.
31-51-1. (Repealed effective July 1, 2020) Creation of program.
31-51-2. (Repealed effective July 1, 2020) Voluntary enrollment; residency.
31-51-3. (Repealed effective July 1, 2020) Authorized agents.
31-51-4. (Repealed effective July 1, 2020) Suppliers of low THC oil.
31-51-5. (Repealed effective July 1, 2020) Public record exempt from disclosure.
31-51-6. (Repealed effective July 1, 2020) Funds.
31-51-7. (Repealed effective July 1, 2020) Immunity.
31-51-8. (Repealed effective July 1, 2020) Fees.
31-51-9. (Repealed effective July 1, 2020) Rules and regulations.
31-51-10. Sunset.

Effective date. — This chapter became effective April 16, 2015.

Editor's notes. — Ga. L. 2015, p. 49, § 1-1/HB 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Haleigh's Hope Act.'"

Code Section 31-51-10 provides for the repeal of this chapter effective July 1, 2020.

31-51-1. (Repealed effective July 1, 2020) Creation of program.

(a) As used in this chapter, the term "low THC oil" shall have the same meaning as set forth in Code Section 16-12-190.

(b) The Board of Regents of the University System of Georgia may cause to be designed, developed, implemented, and administered a low THC oil research program to develop rigorous data that will inform and expand the scientific community's understanding of potential treatments for individuals under 18 years of age with medication-resistant epilepsies.

(c) Any such program shall adhere to the regulatory process established by the federal Food, Drug, and Cosmetic Act, as well as other

federal laws and regulations governing the development of new medications containing controlled substances.

(d) Any universities and nonprofit institutions of higher education that conduct research may continue any research that is permitted under federal law as well as any additional research is permitted under this chapter. (Code 1981, § 31-51-1, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.)

Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-2. (Repealed effective July 1, 2020) Voluntary enrollment; residency.

To the extent permissible under this chapter, any research program developed pursuant to this chapter shall be designed to permit the voluntary enrollment of all individuals under 18 years of age having medication-resistant epilepsies who are residents of this state and who:

(1) Have been residents of this state for the 24 month period immediately preceding their entry into the program; or

(2) Have been residents of this state continuously since birth if they are less than 24 months old at the time of their entry into the program. (Code 1981, § 31-51-2, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.)

Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-3. (Repealed effective July 1, 2020) Authorized agents.

(a) For purposes of this chapter, the board of regents may act through a unit of the University System of Georgia, a nonprofit corporation research institute, or a nonprofit institution of higher education that conducts research, or any combination thereof.

(b) Any nonprofit corporation research institute approved by the board of regents to participate in the research program established under this chapter shall be required to have the necessary experience, expertise, industry standards and security procedures, and infrastructure to implement such research in accordance with accepted scientific and regulatory standards.

(c) The board of regents and its authorized agent may enter into such agreements, among themselves and with other parties, as are reasonable and necessary to implement the provisions of this chapter. (Code 1981, § 31-51-3, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.)

Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-4. (Repealed effective July 1, 2020) Suppliers of low THC oil.

(a) The board of regents or its authorized agent may designate an FDA approved supplier of low THC oil and collaborate with a designated supplier to develop a clinical trial or research study protocol to study the use of low THC oil in the treatment of individuals under 18 years of age with medication-resistant epilepsies, which trial or research study shall be conducted at one or more locations in this state. Such supplier shall be required to supply a source of low THC oil that has been standardized and tested in keeping with such standards.

(b) The board of regents or its authorized agent shall work with any supplier of low THC oil to commit personnel and other resources to such collaboration and to supply low THC oil for a collaborative study under reasonable terms and conditions to be agreed upon mutually. (Code 1981, § 31-51-4, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.)

Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-5. (Repealed effective July 1, 2020) Public record exempt from disclosure.

Any public record, as defined by Code Section 50-18-70, produced pursuant to this chapter shall be exempt from disclosure to the extent provided by Code Section 50-18-72. (Code 1981, § 31-51-5, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.)

Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-6. (Repealed effective July 1, 2020) Funds.

All activities undertaken pursuant to this chapter shall be subject to availability of funds appropriated to the board of regents or to any other academic or research institution or otherwise made available for purposes of this chapter. (Code 1981, § 31-51-6, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.)

Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-7. (Repealed effective July 1, 2020) Immunity.

(a)(1) Research program participants and their parents, guardian, or legal custodian, employees of the board of regents designated to participate in the research program, program agents and collaborators and their designated employees, and program suppliers of low THC oil and their designated employees shall be immune from state prosecution as provided in Code Section 16-12-191.

(2) Physicians, clinical researchers, pharmacy personnel, and all medical personnel in the research program authorized by this chapter shall be immune from state prosecution as provided in Code Section 16-12-191.

(b) For purposes of providing proof of research program participation, the board of regents or its agent which administers the research program authorized by this chapter shall provide appropriate permits, suitable for carrying on their persons or display, as applicable, to research program participants and their parents, guardian, or legal custodian, employees of the board of regents designated to participate in the research program, program agents and collaborators and their designated employees, program suppliers of low THC oil and their designated employees, physicians, clinical researchers, pharmacy personnel, and all medical personnel in the program. (Code 1981, § 31-51-7, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.)

Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-8. (Repealed effective July 1, 2020) Fees.

The board of regents may establish fees for program participants in such amounts as are reasonable to offset program costs. (Code 1981, § 31-51-8, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.)

Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-9. (Repealed effective July 1, 2020) Rules and regulations.

The board of regents may adopt such rules and regulations as are reasonable and necessary for purposes of this chapter. (Code 1981, § 31-51-9, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.)

Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-10. Sunset.

This chapter shall stand repealed on July 1, 2020. (Code 1981, § 31-51-10, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.)

TITLE 32

HIGHWAYS, BRIDGES, AND FERRIES

Chap.

2. Department of Transportation, 32-2-1 through 32-2-81.

3. Acquisition of Property for Transportation Purposes, 32-3-1 through 32-3-39.

4. State, County, and Municipal Road Systems, 32-4-1 through 32-4-123.

5. Funds for Public Roads, 32-5-1 through 32-5-31.

6. Regulation of Maintenance and Use of Public Roads Generally, 32-6-1 through 32-6-248.

7. Abandonment, Disposal, or Leasing of Property Not Needed for Public Road Purposes, 32-7-1 through 32-7-5.

9. Mass Transportation, 32-9-1 through 32-9-14.

10. Public Authorities, 32-10-1 through 32-10-133.

12. Georgia Coordinating Committee for Rural and Human Services Transportation, 32-12-1 through 32-12-6. [Repealed].

CHAPTER 1

GENERAL PROVISIONS

32-1-2. Purpose and legislative intent.

JUDICIAL DECISIONS

State DOT not liable for failing to erect road closure signs on county road. — Because an accident occurred on a county-owned road and did not occur on a part of the state highway system upon which the DOT owed a duty to motorists, and the couple's expert's affidavit could not establish a legal duty to erect signs or to take other steps to inform drivers of the closure of the county-owned road, summary judgment for the DOT was proper. Diamond v. DOT, 326 Ga. App. 189, 756 S.E.2d 277 (2014).

County's duty to maintain dedicated roads in subdivision. — Trial court erred by granting mandamus relief under O.C.G.A. § 9-6-20 with regard to a property owner seeking to compel a county to maintain roads in a subdivision because while the county had accepted dedication of the streets, the county still was vested with the discretion to decide whether to open all of the roads or close any of the roads, and the trial court was required to determine whether the county's decisions were arbitrary, capricious, and unreasonable or a gross abuse of discretion as nowhere in the judgment

was that standard articulated. Burke County v. Askin, 291 Ga. 697, 732 S.E.2d 416 (2012).

32-1-3. Definitions.

JUDICIAL DECISIONS

Unopened, undeveloped, proposed roads, etc.

County, which had accepted dedication of a subdivision road in 1962 but had not completed the road or maintained it for 50 years, due to the county's mistaken belief that the road was private, was ordered to complete and maintain the road; the county's failure to complete the road was arbitrary and capricious, given the county's acceptance of subdivision plats requiring the road. As to unopened roads in the subdivision, the roads were not public under O.C.G.A. § 9-6-21(b), and the county had no obligation to maintain those unopened roads. Burke County v. Askin, 294 Ga. 634, 755 S.E.2d 747 (2014).

County's duty to maintain dedicated roads in subdivision. — Trial court erred by granting mandamus relief under O.C.G.A. § 9-6-20 with regard to a property owner seeking to compel a county to maintain roads in a subdivision because while the county had accepted dedication of the streets, the county still was vested with the discretion to decide whether to open all of the roads or close any of the roads, and the trial court was required to determine whether the county's decisions were arbitrary, capricious, and unreasonable or a gross abuse of discretion as nowhere in the judgment was that standard articulated. Burke County v. Askin, 291 Ga. 697, 732 S.E.2d 416 (2012).

CHAPTER 2

DEPARTMENT OF TRANSPORTATION

Article 3

Officers

Sec.

32-2-41.1. Progress report and Strategic Transportation Plan.
32-2-41.2. Development of benchmarks; reports; value engineering studies.

Article 4

Exercise of Power to Contract Generally

Sec.

32-2-81. "Design-build procedure" defined; procedures for utilization; limitation on contracting; summary projects.

ARTICLE 1

GENERAL PROVISIONS

32-2-2. Powers and duties of department generally.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Negligence suit involving paving company. — Trial court erred by granting a paving company summary judgment in a negligence suit based on the affidavit of the company's president because the business records referred to and relied upon by the paving company's president were not attached to the president's affidavit; thus, the affidavit could not be used to support the company's motion for summary judgment. Brown v. Seaboard Constr. Co., 317 Ga. App. 667, 732 S.E.2d 325 (2012).

ARTICLE 3

OFFICERS

32-2-41.1. Progress report and Strategic Transportation Plan.

(a) On or before October 15, 2009, the director shall prepare a report for the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the Senate Transportation Committee and the House Committee on Transportation, respectively, detailing the progress the division has made on preparing a State-wide Strategic Transportation Plan. The director shall deliver a draft of the plan for comments and suggestions by members of the General Assembly and the Governor on or before December 31, 2009. Comments and suggestions by the House and Senate Transportation Committees of the General Assembly and the Governor shall be submitted to the director no later than February 15, 2010. This plan shall include a list of projects realistically expected to begin construction within the next four years, the cost of such projects, and the source of funds for such projects. The plan shall be developed with consideration of investment policies addressing:

(1) Growth in private-sector employment, development of work force, and improved access to jobs;

(2) Reduction in traffic congestion;

(3) Improved efficiency and reliability of commutes in major metropolitan areas;

(4) Efficiency of freight, cargo, and goods movement;

(5) Coordination of transportation investment with development patterns in major metropolitan areas;

(6) Market driven travel demand management;

(7) Optimized capital asset management;

(8) Reduction in accidents resulting in injury and loss of life;

(9) Border-to-border and interregional connectivity; and

(10) Support for local connectivity to the state-wide transportation network.

The investment policies provided for in paragraphs (1) through (10) of this subsection shall also guide the development of the allocation formula provided for under Code Section 32-5-27 and shall expire on April 15, 2012, and every four years thereafter unless amended or renewed. The final version of the State-wide Strategic Transportation Plan shall be completed by April 10, 2010, and shall be delivered to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the Senate Transportation Committee and the House Committee on Transportation. A report detailing the progress of projects and programs in the State-wide Strategic Transportation Plan shall be prepared and delivered annually thereafter, and a revised version shall be prepared and delivered at least biennially thereafter.

(b) The report and plan prepared under subsection (a) of this Code section shall also be published on the website of the department. (Code 1981, § 32-2-41.1, enacted by Ga. L. 2008, p. 528, § 1/HB 1189; Ga. L. 2009, p. 976, § 6/SB 200; Ga. L. 2014, p. 851, § 1/HB 774.)

The 2014 amendment, effective July 1, 2014, substituted "annually" for "semi-annually" in the last sentence of the ending paragraph of subsection (a).

32-2-41.2. Development of benchmarks; reports; value engineering studies.

(a) The commissioner shall develop and publish in print or electronically benchmarks, based upon the type and scope of a construction project, that detail a realistic time frame for completion of each stage of a construction project, including preliminary engineering and design, environmental permitting and review, and right of way acquisition.

(b) The director shall submit an annual report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House and Senate Transportation Committees detailing the progress of every construction project valued at $10 million or more against the benchmarks. This report shall include an analysis explaining the discrepancies between the benchmarks and

actual performance on each project as well as an explanation for delays. This report shall also be published on the website of the department.

(c) The department shall create and maintain on its website a detailed status report on each project under planning or construction. This status report shall include, but not be limited to, the name and contact information of the project manager, if applicable.

(d) Value engineering studies shall be performed on all projects whose costs exceed $50 million, except for any project procured in accordance with Code Sections 32-2-79, 32-2-80, and 32-2-81, and the director shall submit an annual report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House and Senate Transportation Committees detailing the amount saved due to the value engineering studies. This report shall also be published on the website of the department. (Code 1981, § 32-2-41.2, enacted by Ga. L. 2008, p. 806, § 1/SB 417; Ga. L. 2009, p. 976, § 7/SB 200; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2013, p. 67, § 1/HB 202; Ga. L. 2014, p. 851, § 2/HB 774.)

The 2013 amendment, effective July 1, 2013, in the first sentence of subsection (d), substituted "$50 million" for "$10 million" and inserted "except for any project procured in accordance with Code Sections 32-2-79, 32-2-80, and 32-2-81,".

The 2014 amendment, effective July 1, 2014, substituted "submit an annual" for "submit a semiannual" near the beginning of the first sentence of subsection (b).

ARTICLE 4

EXERCISE OF POWER TO CONTRACT GENERALLY

32-2-61. Limitations on power to contract.

JUDICIAL DECISIONS

State DOT not liable for failing to erect road closure signs on county road. — Because an accident occurred on a county-owned road and did not occur on a part of the state highway system upon which the DOT owed a duty to motorists, and the couple's expert's affidavit could not establish a legal duty to erect signs or to take other steps to inform drivers of the closure of the county-owned road, summary judgment for the DOT was proper. Diamond v. DOT, 326 Ga. App. 189, 756 S.E.2d 277 (2014).

32-2-81. "Design-build procedure" defined; procedures for utilization; limitation on contracting; summary projects.

(a) As used in this Code section, the term "design-build procedure" means a method of contracting under which the department contracts with another party for the party to both design and build the structures, facilities, systems, and other items specified in the contract.

(b) The department may use the design-build procedure for buildings, bridges and approaches, rail corridors, technology deployments, and limited or controlled access projects or projects that may be constructed within existing rights of way where the scope of work can be clearly defined or when a significant savings in project delivery time can be attained.

(c) When the department determines that it is in the best interests of the public, the department may combine any or all of the environmental services, utility relocation services, right of way services, design services, and construction phases of a public road or other transportation purpose project into a single contract using a design-build procedure. Design-build contracts may be advertised and awarded notwithstanding the requirements of paragraph (1) of subsection (d) of Code Section 32-2-61. However, construction activities shall not begin on any portion of such projects until title to the necessary rights of way and easements for the construction of that portion of the project has vested in the state or a local governmental entity and all railroad crossing and utility agreements have been executed.

(d) The department shall adopt by rule procedures for administering design-build contracts. Such procedures shall include, but not be limited to:

(1) Prequalification requirements;

(2) Public advertisement procedures;

(3) Request for qualification requirements;

(4) Request for proposal requirements;

(5) Criteria for evaluating technical information and project costs;

(6) Criteria for selection and award process, provided that the rules shall specify that the criteria for selection shall consist of the following minimum two components for any two-step procurement process:

(A) A statement of qualifications from which the department will determine a list of qualified firms for the project, provided that, if the department determines it is in the state's best interest, it may omit this requirement and move directly to a one-step procurement process through the issuance of a request for proposal from which the department may select the lowest qualified bidder; and

(B) From the list of qualified firms as provided in subparagraph (A) of this paragraph, a technical proposal and a price proposal from each firm from which the department shall select the lowest qualified bidder or, in the event the department uses the best value procurement process, the request for proposal shall specify the

requirements necessary for the selection of the best value proposer which shall include, at a minimum, a weighted cost component and a technical component. A proposal shall only be considered nonresponsive if it does not contain all the information and level of detail requested in the request for proposal. A proposal shall not be deemed to be nonresponsive solely on the basis of minor irregularities in the proposal that do not directly affect the ability to fairly evaluate the merits of the proposal. Notwithstanding the requirements of Code Section 36-91-21, under no circumstances shall the department use a "best and final offer" standard in awarding a contract in order to induce one proposer to bid against an offer of another proposer. The department may provide for a stipulated fee to be awarded to the short list of qualified proposers who provide a responsive, successful proposal. In consideration for paying the stipulated fee, the department may use any ideas or information contained in the proposals in connection with the contract awarded for the project, or in connection with a subsequent procurement, without obligation to pay any additional compensation to the unsuccessful proposers;

(7) Identification of those projects that the department believes are candidates for design-build contracting; and

(8) Criteria for resolution of contract issues. The department may adopt a method for resolving issues and disputes through negotiations at the project level by the program manager up to and including a dispute review board procedure with final review by the commissioner or his or her designee. Regardless of the status or disposition of the issue or dispute, the design-builder and the department shall continue to perform their contractual responsibilities. The department shall have the authority to suspend or provide for the suspension of Section 108 of the department's standard specifications pending final resolution of such contract issues and disputes. This paragraph shall not prevent an aggrieved party from seeking judicial review.

(e) In contracting for design-build projects, the department shall be limited to contracting for no more than 50 percent of the total amount of construction projects awarded in the previous fiscal year.

(f) Not later than 90 days after the end of the fiscal year, the department shall provide to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and chairpersons of the House and Senate Transportation Committees a summary containing all the projects awarded during the fiscal year using the design-build contracting method. Included in the report shall be an explanation for projects awarded to other than the low bid proposal. This report shall be made available for public information. (Code 1981, § 32-2-81, enacted by Ga.

L. 2004, p. 905, § 2; Ga. L. 2005, p. 950, § 1/HB 530; Ga. L. 2009, p. 8, § 32/SB 46; Ga. L. 2010, p. 396, § 1/SB 305; Ga. L. 2012, p. 1343, § 4/HB 817; Ga. L. 2013, p. 68, § 1/SB 70.)

The 2013 amendment, effective July 1, 2013, in subsection (a), inserted "systems," near the end; in subsection (b), inserted "technology deployments," near the middle; in subsection (c), inserted "utility relocation services," in the first sentence and substituted "activities shall" for "activities may" in the third sentence; deleted former paragraph (d)(3), which read: "Scope of service requirements;"; redesignated former paragraphs (d)(4) through (d)(9) as present paragraphs (d)(3) through (d)(8), respectively; in paragraph (d)(3), substituted "Request for qualification requirements" for "Letters of interest requirements"; rewrote paragraph (d)(4); added "for any two-step procurement process" at the end of paragraph (d)(6); added the proviso in subparagraph (d)(6)(A); rewrote subparagraph (d)(6)(B); in paragraph (d)(7), deleted ", with the understanding that in general this type of contract should have minimal right of way or utility issues which are unresolved; provided, however, the failure of the department to identify such projects does not prevent the department from using design-build contracting in extraordinary circumstances including emergency work, unscheduled projects, or where loss of funding might occur" following "contracting"; in paragraph (d)(8), substituted "paragraph shall" for "paragraph does" in the last sentence; deleted former subsection (e); redesignated former subsections (f) and (g) as present subsections (e) and (f), respectively; and substituted "chairpersons" for "chairmen" in the first sentence of subsection (f).

CHAPTER 3

ACQUISITION OF PROPERTY FOR TRANSPORTATION PURPOSES

Article 1
General Provisions

Sec.
32-3-3.1. Relocation or reconstruction of outdoor advertising sign; requirements.

ARTICLE 1

GENERAL PROVISIONS

32-3-1. Authority to acquire property for present or future public road or other transportation purposes.

JUDICIAL DECISIONS

ANALYSIS

AUTHORITY TO CONDEMN

Authority to Condemn

So long as general public not excluded from road, power of eminent domain could be exercised. — Trial court properly denied a condemnee's petition to set aside a declaration of taking filed by a county under O.C.G.A. § 32-3-1 because the road at issue was open for use by the general public despite only a few private citizens most likely using the road; but, so long as the general public was not excluded, the power of eminent domain could be exercised. Emery v. Chattooga County, 325 Ga. App. 587, 753 S.E.2d 149 (2014).

32-3-3.1. Relocation or reconstruction of outdoor advertising sign; requirements.

(a) When rights of way or real property or interests therein are acquired by a state agency, county, or municipality for public road purposes and an outdoor advertising sign permitted by the state in accordance with Part 2 of Article 3 of Chapter 6 of this title and a local county or municipal ordinance, which has not lapsed and is in good standing, is located upon such property, the outdoor advertising sign may be relocated or reconstructed and relocated through agreement of the owner of the property and owner of the outdoor advertising sign, if such owners do not refer to the same person, so long as the new location:

(1) Is within 250 feet of its original location, provided that the new location meets the requirements for an outdoor advertising sign provided in Part 2 of Article 3 of Chapter 6 of this title;

(2) Is available to the owner of the outdoor advertising sign and is comparable to the original location, as agreed upon by the owner of the outdoor advertising sign and the department;

(3) Does not result in a violation of federal or state law; and

(4) Is within zoned commercial or industrial areas or unzoned commercial or industrial areas as defined in Code Section 32-6-71.

(b) An outdoor advertising sign relocated as provided for in subsection (a) of this Code section may be adjusted in height or angle or both in order to restore the visibility of the sign to the same or a comparable visibility which existed prior to acquisition by a state agency, county, or municipality, provided that the height of such relocated sign shall not exceed the greater of the height of the existing sign or 75 feet, as measured from the base of the sign or the crown of the adjacent roadway to which the sign is permitted, whichever is greater.

(c) For any federal aid project or any project financed in whole or in part with federal funds, the actual costs of relocation or reconstruction and relocation of an outdoor advertising sign relocated as provided for in subsection (a) of this Code section shall be paid by the department. For any project not financed in whole or in part with federal funds, the actual costs of relocation or reconstruction and relocation shall be paid by the owner of the outdoor advertising sign.

(d) If no relocation site that meets the requirements of paragraphs (1) through (4) of subsection (a) of this Code section exists, just and adequate compensation shall be paid by the department to the owner of the outdoor advertising sign.

(e) If a sign is eligible to be relocated as provided for in subsection (a) of this Code section but such new location would result in a conflict with local ordinances in the city or county of applicable jurisdiction and no variance or other exception is granted to allow relocation as requested by the owner of the outdoor advertising sign, just and adequate compensation shall be paid by the local governing authority to the owner of the outdoor advertising sign. However, no compensation resulting from the denial of a variance or exception by a local governing authority for an outdoor advertising sign eligible for relocation under this Code section shall be paid either directly or indirectly by the department. (Code 1981, § 32-3-3.1, enacted by Ga. L. 2015, p. 1072, § 5/SB 169.)

Effective date. — This Code section became effective July 1, 2015.

32-3-11. Power of judge to set aside, vacate, and annul declaration of taking; issuance and service on condemnor of rule nisi; hearing.

Law reviews. — For annual survey on real property, see 64 Mercer L. Rev. 255 (2012).

JUDICIAL DECISIONS

Application of 60-day requirement. — Pursuant to the clear language of O.C.G.A. § 32-3-11(c), it is the duty of the court, not the condemnee, to issue a rule nisi and schedule the required hearing. The Supreme Court of Georgia disapproves of the portion of Lopez-Aponte v. City of Columbus, 267 Ga. App. 65 (2004), which places the burden of issuing a rule nisi and obtaining a timely hearing upon the condemnee. Adkins v. Cobb County, 291 Ga. 521, 731 S.E.2d 665 (2012).

Petition to set aside properly denied. — Trial court properly denied a condemnee's petition to set aside a declaration of taking filed by a county under O.C.G.A. § 32-3-1 because the road at issue was open for use by the general public despite only a few private citizens most likely using the road, but so long as the general public was not excluded, the power of eminent domain could be exercised. Emery v. Chattooga County, 325 Ga. App. 587, 753 S.E.2d 149 (2014).

CHAPTER 4

STATE, COUNTY, AND MUNICIPAL ROAD SYSTEMS

Article 2

State Highway System

Sec.
32-4-20. Composition of state highway system.

Article 3

County Road Systems

PART 2

EXERCISE BY COUNTIES OF POWER TO CONTRACT GENERALLY

32-4-63. Limitations on power to contract; at least two estimates required for certain expenditures.

Article 4

Municipal Street Systems

PART 2

EXERCISE BY MUNICIPALITIES OF POWER TO CONTRACT GENERALLY

Sec.
32-4-113. Limitations on power to contract; at least two estimates required for certain expenditures.

ARTICLE 2

STATE HIGHWAY SYSTEM

32-4-20. Composition of state highway system.

The state highway system shall consist of an integrated network of arterials and of other public roads or bypasses serving as the major collectors therefor. No public road shall be designated as a part of the state highway system unless it meets at least one of the following requirements:

(1) Serves trips of substantial length and duration indicative of regional, state-wide, or interstate importance;

(2) Connects adjoining county seats;

(3) Connects urban or regional areas with outlying areas, both intrastate and interstate; or

(4) Serves as part of the principal collector network for the state-wide and interstate arterial public road system. (Code 1933, § 95A-202, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2012, p. 1343, § 5/HB 817; Ga. L. 2015, p. 1072, § 1/SB 169.)

The 2015 amendment, effective July 1, 2015, inserted "or" at the end of paragraph (3); deleted "; or" at the end of paragraph (4); and deleted former paragraph (5), which read: "Serves as part of a programmed road improvement project plan in which the department will utilize state or federal funds for the acquisition of rights of way".

ARTICLE 3

COUNTY ROAD SYSTEMS

PART 1

GENERAL POWERS AND DUTIES OF COUNTIES

32-4-41. Duties.

Law reviews. — For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

JUDICIAL DECISIONS

Judicial review of abandonment decision. — In a mandamus action, a trial court erred by reversing a decision of a county board of commissioners to abandon a road as the trial court failed to give proper deference to the board's decision to abandon the road and substituted the court's own judgment for that of the board. Scarborough v. Hunter, 293 Ga. 431, 746 S.E.2d 119 (2013).

State DOT not liable for failing to erect road closure signs on county road. — Because an accident occurred on a county-owned road and did not occur on a part of the state highway system upon which the DOT owed a duty to motorists, and the couple's expert's affidavit could not establish a legal duty to erect signs or to take other steps to inform drivers of the closure of the county-owned road, summary judgment for the DOT was proper. Diamond v. DOT, 326 Ga. App. 189, 756 S.E.2d 277 (2014).

Duty to maintain dedicated roads in subdivision. — Trial court erred by granting mandamus relief under O.C.G.A. § 9-6-20 with regard to a property owner seeking to compel a county to maintain roads in a subdivision because while the county had accepted dedication of the streets, the county still was vested with the discretion to decide whether to open all of the roads or close any of the roads, and the trial court was required to determine whether the county's decisions were arbitrary, capricious, and unreasonable or a gross abuse of discretion as nowhere in the judgment was that standard articulated. Burke County v. Askin, 291 Ga. 697, 732 S.E.2d 416 (2012).

County, which had accepted dedication of a subdivision road in 1962 but had not completed the road or maintained the road for 50 years, due to the county's mistaken belief that the road was private, was ordered to complete and maintain the road; the county's failure to complete the road was arbitrary and capricious, given the county's acceptance of subdivision plats requiring the road. As to unopened roads in the subdivision, the roads were not public under O.C.G.A. § 9-6-21(b), and the county had no obligation to maintain those roads. Burke County v. Askin, 294 Ga. 634, 755 S.E.2d 747 (2014).

PART 2

EXERCISE BY COUNTIES OF POWER TO CONTRACT GENERALLY

32-4-63. Limitations on power to contract; at least two estimates required for certain expenditures.

(a) A county is prohibited from negotiating a contract except a contract:

(1) Involving the expenditure of less than $200,000.00;

(2) With a state agency or county or municipality with which a county is authorized to contract in accordance with the provisions of Code Sections 32-4-61 and 32-4-62;

(3) For the purchase of those materials, supplies, and equipment necessary for the county's construction and maintenance of its public roads and for the support and maintenance of the county's forces used in such work, as authorized by Chapter 91 of Title 36;

(4) Subject to Article 6 of Chapter 6 of this title, with a railroad or railway company or a publicly or privately owned utility concerning relocation of its line, tracks, or facilities where the same are not then located in a public road and such relocation or grade-crossing elimination is necessary as an incident to the construction of a new public road or to the reconstruction or maintenance of an existing public road. Nothing contained in this paragraph shall be construed as requiring a county to furnish a site or right of way for railroad or railway lines or tracks of public utility facilities required to be removed from a public road;

(5) For engineering or other kinds of professional or specialized services;

(6) For emergency maintenance requiring immediate repairs to a public road, including but not limited to bridge repairs, snow and ice removal, and repairs due to flood conditions; or

(7) Otherwise expressly authorized by law.

(b) No contract involving an expenditure of more than $20,000.00 but less than $200,000.00 shall be awarded under this Code section without the submission of at least two estimates. (Code 1933, § 95A-819, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1989, p. 356, § 2; Ga. L. 2000, p. 498, § 9; Ga. L. 2014, p. 851, § 3/HB 774.)

The 2014 amendment, effective July 1, 2014, designated the existing provisions of this Code section as subsection (a); substituted "$200,000.00" for "$20,000.00" in paragraph (a)(1); and added subsection (b).

ARTICLE 4

MUNICIPAL STREET SYSTEMS

PART 1

GENERAL POWERS AND DUTIES OF MUNICIPALITY

32-4-91. Construction and maintenance of systems; acquisition of labor; maximum bridge weight; notification of department about new streets and abandoned streets.

JUDICIAL DECISIONS

State DOT not liable for failing to erect road closure signs on county road. — Because an accident occurred on a county-owned road and did not occur on a part of the state highway system upon which the DOT owed a duty to motorists, and the couple's expert's affidavit could not establish a legal duty to erect signs or to take other steps to inform drivers of the closure of the county-owned road, summary judgment for the DOT was proper. Diamond v. DOT, 326 Ga. App. 189, 756 S.E.2d 277 (2014).

32-4-93. Liability of municipalities for defects in public roads.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

O.C.G.A. § 32-4-93(a) applies to sidewalks and constructive notice of a defect may be imputed through the knowledge of the city's employees or agents, or may be shown by testimony as to how long the defect existed prior to the injury, objective evidence that the defect existed over time, or evidence that others were injured as a result of the same condition over a period of years. Clark v. City of Atlanta, 322 Ga. App. 151, 744 S.E.2d 122 (2013).

Constructive notice of uneven sidewalk pavers. — Trial court erred by granting a city summary judgment in a pedestrian's negligence suit seeking damages for a slip and fall on uneven sidewalk pavers because the evidence showed that the uneven and defective condition existed at least seven months prior to the fall; thus, a genuine issue of fact existed as to whether the city had constructive notice. Clark v. City of Atlanta, 322 Ga. App. 151, 744 S.E.2d 122 (2013).

No evidence of city liability. — Trial court did not err by dismissing a pedestrian's slip and fall claims against a city because there was no evidence that the city owned any part of the sidewalk and no evidence that the city performed any maintenance, repairs, or renovations to the sidewalk; thus, the pedestrian presented no evidence to support the contention that the city had or breached a duty to maintain the sidewalk. Hagan v. Ga. DOT, 321 Ga. App. 472, 739 S.E.2d 123 (2013).

Cited in City of Atlanta v. Mitcham, 296 Ga. 576, 769 S.E.2d 320 (2015).

PART 2

EXERCISE BY MUNICIPALITIES OF POWER TO CONTRACT GENERALLY

32-4-113. Limitations on power to contract; at least two estimates required for certain expenditures.

(a) A municipality is prohibited from negotiating a contract except a contract:

(1) Involving the expenditure of less than $200,000.00;

(2) With a state agency or political subdivision as authorized by Code Sections 32-4-111 and 32-4-112;

(3) With a railroad or railway company or a publicly or privately owned utility as authorized by Article 6 of Chapter 6 of this title;

(4) For engineering or other kinds of professional or specialized services;

(5) For emergency maintenance requiring immediate repairs to a public road, including but not limited to bridge repairs, snow and ice removal, and repairs due to flood conditions; or

(6) Otherwise expressly authorized by law.

(b) No contract involving an expenditure of more than $20,000.00 but less than $200,000.00 shall be awarded under this Code section without the submission of at least two estimates. (Code 1933, § 95A-834, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1989, p. 356, § 3; Ga. L. 2014, p. 851, § 4/HB 774.)

The 2014 amendment, effective July 1, 2014, designated the existing provisions of this Code section as subsection (a); substituted "$200,000.00" for "$20,000.00" in paragraph (a)(1); and added subsection (b).

CHAPTER 5

FUNDS FOR PUBLIC ROADS

Article 1

Federal Funds

Sec.
32-5-2. Appropriation of funds to department.

Article 2

State Public Transportation Fund

Sec.
32-5-24. Authorization of expenditure for public roads serving

Sec.
planned communities [Repealed].
32-5-27.1. Plan for use of department resources; budgeting considerations.

Article 3

Allocation of Funds

32-5-30. Allocation of state and federal funds; items excluded from budgeting; budgeting periods; authorization of reduction of funds allocated.

ARTICLE 1

FEDERAL FUNDS

32-5-2. Appropriation of funds to department.

All federal funds received by the state treasurer under Code Section 32-5-1 are continually appropriated to the department for the purpose specified in the grants of such funds except as such funds may be directed by the federal government to the State Road and Tollway Authority. (Code 1933, § 95A-702, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2001, p. 1251, § 1-5; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2015, p. 1072, § 2/SB 169.)

The 2015 amendment, effective July 1, 2015, deleted the proviso at the end of this Code section, which read: ", provided that no federal funds or funds appropriated to the department shall be expended for procurement of rights of way for a road to be constructed on a county road system except as otherwise provided by law or by agreement between the federal government and the department".

ARTICLE 2

STATE PUBLIC TRANSPORTATION FUND

32-5-24. Authorization of expenditure for public roads serving planned communities.

Reserved. Repealed by Ga. L. 2015, p. 385, § 2-6/HB 252, effective July 1, 2015.

Editor's notes. — This Code section was based on Code 1933, § 95A-706.1, enacted by Ga. L. 1974, p. 1215, § 3; Ga. L. 1982, p. 3, § 32.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

32-5-27.1. Plan for use of department resources; budgeting considerations.

(a) In addition to the requirements contained in Code Section 32-5-27, the department shall annually prepare and submit to the General Assembly, for approval by the Senate Transportation Committee and the House Committee on Transportation, a ten-year strategic plan that outlines the use of department resources for the upcoming fiscal years.

(b) The Senate Transportation Committee and the House Committee on Transportation shall approve the plan and may make recommendations to the Senate Appropriations Committee and the House Committee on Appropriations for their consideration in developing the budget.

(c) Such plan shall identify at least the following categories and establish a target percentage of resources to be expended and the respective fund sources in each of the following areas:

(1) Construction of new highway projects;

(2) Maintenance of existing infrastructure;

(3) Bridge repairs and replacement;

(4) Safety enhancements; and

(5) Administrative expenses.

(d) Priority shall be given to expenditure of available resources for maintenance, expansion, and improvement of highway infrastructure in the areas of this state most impacted by traffic congestion and to areas of this state in need of highway infrastructure to aid in attracting economic development to the area.

(e) Such plan shall also bring forward all efficiencies found within the bureaucracy of the department and how those funds have been redirected to road construction. (Code 1981, § 32-5-27.1, enacted by Ga. L. 2015, p. 236, § 2-1/HB 170.)

Effective date. — This Code section became effective July 1, 2015.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the

Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act."

ARTICLE 3

ALLOCATION OF FUNDS

32-5-30. Allocation of state and federal funds; items excluded from budgeting; budgeting periods; authorization of reduction of funds allocated.

(a)(1) The total of expenditures from the State Public Transportation Fund under paragraphs (4), (5), and (6) of Code Section 32-5-21 plus expenditures of federal funds appropriated to the department shall be budgeted by the department over two successive budgeting periods every decade. However, such budgeting shall not include:

(A) Any federal funds specifically designated for projects that have been earmarked by a member of Congress in excess of appropriated funds;

(B) Any funds for a project undertaken for purposes of providing for the planning, surveying, constructing, paving, and improving of The Dwight D. Eisenhower System of Interstate and Defense Highways within the state; or

(C) Any funds for a project undertaken for purposes of providing for the planning, surveying, constructing, paving, and improving of any part of the state designated freight corridor, when such designation is made by the director of planning with approval from a majority of the board.

(2) The first budgeting period shall commence immediately following redistricting of congressional districts and shall be for a duration of five years. The second budgeting period shall continue until the beginning of the budgeting period following the next redistricting of congressional districts after each decennial census; provided, however, if the congressional districts have been redrawn prior to a new decennial census, but after the approval of an existing map based on the last decennial census, the budgeting period shall include two successive budgeting periods. The first budgeting period shall end upon approval of the new redistricting and the second budgeting period shall commence from the date such redrawn congressional districts have been approved and shall continue until the next budgeting period following the next redistricting of congressional districts. The department shall budget such expenditures such that at the end of such budgeting period funding obligations equivalent to at least 80 percent of such total for such budgeting period shall have

been divided equally among the congressional districts in this state, as those districts existed at the commencement of such budgeting period, for public road and other public transportation purposes in such districts.

(b)(1) The board may upon approval by two-thirds of its membership authorize a reduction in the share of funds allocated pursuant to this Code section to any such congressional district if such supermajority of the board determines that such district does not have sufficient projects available for expenditure of funds within that district to avoid lapsing of appropriated funds.

(2) In the event that funding becomes available to the department which could not otherwise be allocated among congressional districts due to the allocation requirements of this Code section, the board may upon approval by a majority of its membership authorize a waiver of such allocation requirements to the extent necessary to allow the expenditure of such funding, and any project, projects, or portion thereof undertaken with such additional funding shall be in addition to those projects funded in accordance with the allocation requirements of this Code section in the fiscal year in which the additional funds became available or any subsequent year; provided, however, that any such waiver shall be valid only for the fiscal year in which it is granted, and any funds budgeted pursuant to a waiver granted by this paragraph which were not obligated by the end of such fiscal year shall not be obligated in violation of the allocation requirements of this Code section in a subsequent fiscal year unless a majority of the board again authorizes a waiver of the allocation requirements in such subsequent fiscal year.

(c) Provisions of this Code section may be waived pursuant to subsection (b) of Code Section 32-5-1 only upon approval by two-thirds of the membership of the board. (Code 1981, § 32-5-30, enacted by Ga. L. 1999, p. 112, § 2; Ga. L. 2000, p. 1483, § 1; Ga. L. 2001, p. 4, § 32; Ga. L. 2002, p. 1490, § 1; Ga. L. 2005, p. 724, § 1/SB 4; Ga. L. 2006, p. 72, § 32/SB 465; Ga. L. 2009, p. 8, § 32/SB 46; Ga. L. 2013, p. 67, § 2/HB 202.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of paragraph (a)(1) for the former provisions, which read: "The total of expenditures from the State Public Transportation Fund under paragraphs (4), (5), and (6) of Code Section 32-5-21 plus expenditures of federal funds appropriated to the department, not including any federal funds specifically designated for projects that have been earmarked by a member of Congress in excess of appropriated funds, shall be budgeted by the department over two successive budgeting periods every decade."

CHAPTER 6

REGULATION OF MAINTENANCE AND USE OF PUBLIC ROADS GENERALLY

Article 1

General Provisions

Sec.
32-6-5. Closure of or limiting access to roads due to declared state of emergency for inclement weather conditions; exception for certain vehicle operators.

Article 2

Dimensions and Weight of Vehicles and Loads

Sec.
32-6-28. Permits for excess weight and dimensions.

ARTICLE 1

GENERAL PROVISIONS

32-6-5. Closure of or limiting access to roads due to declared state of emergency for inclement weather conditions; exception for certain vehicle operators.

(a) The department may close or limit access to any portion of road on the state highway system due to a declared state of emergency for inclement weather conditions that results in dangerous driving conditions. There shall be erected or posted signage of adequate size indicating that a portion of the state highway system has been closed or access has been limited. When the department determines a road shall have limited access due to a declared state of emergency for inclement winter weather conditions, notice shall be given to motorists through posted signage that motor vehicles must be equipped with tire chains, four-wheel drive with adequate tires for existing conditions, or snow tires with a manufacturer's all weather rating in order to proceed. Such signage shall inform motorists that it shall be unlawful to proceed on such road without such equipment. With the exception of buses, operators of commercial motor vehicles as defined by Code Section 40-1-1 with four or more drive wheels traveling on a road declared as limited access due to a declared state of emergency for inclement winter weather conditions shall affix tire chains to each of the outermost drive wheel tires. Bus and motor coach operators shall affix tire chains to at least two of the drive wheel tires before proceeding on a road with limited access due to a declared state of emergency for inclement winter weather conditions. For purposes of this Code section, the term "tire chains" means metal chains which consist of two circular metal loops, positioned on each side of a tire, connected by not less than nine evenly spaced chains across the tire tread or any other traction devices as

provided for by rules and regulations of the commissioner of public safety.

(b) A driver of a motor vehicle who causes an accident or blocks the flow of traffic while failing to comply with the requirements of subsection (a) of this Code section when access is limited on the state highway system due to a declared state of emergency for inclement weather conditions shall be fined up to $1,000.00.

(c) This Code section shall not apply to a tow operator towing a motor vehicle or traveling to a site from which a motor vehicle shall be towed or to emergency responders traveling the roadway in order to fulfill their duties. (Code 1981, § 32-6-5, enacted by Ga. L. 2012, p. 1343, § 6/HB 817; Ga. L. 2014, p. 807, § 1/HB 753.)

The 2014 amendment, effective July 1, 2014, rewrote subsection (a); added subsection (b); and redesignated former subsection (b) as present subsection (c).

ARTICLE 2

DIMENSIONS AND WEIGHT OF VEHICLES AND LOADS

32-6-28. Permits for excess weight and dimensions.

(a) **Generally.**

(1)(A) The commissioner or an official of the department designated by the commissioner may, in his or her discretion, upon application in writing and good cause being shown therefor, issue a permit in writing authorizing the applicant to operate or move upon the state's public roads a motor vehicle or combination of vehicles and loads whose weight, width, length, or height, or combination thereof, exceeds the maximum limit specified by law, provided that the load transported by such vehicle or vehicles is of such nature that it is a unit which cannot be readily dismantled or separated; and provided, further, that no permit shall be issued to any vehicle whose operation upon the public roads of this state threatens to unduly damage a road or any appurtenance thereto, except that the dismantling limitation specified in this Code section shall not apply to loads which consist of cotton, tobacco, concrete pipe, and plywood that do not exceed a width of nine feet or of round bales of hay that do not exceed a width of 11 feet and which are not moved on part of The Dwight D. Eisenhower System of Interstate and Defense Highways. However, vehicles transporting portable buildings and vehicles not exceeding 65 feet in length transporting boats on roads not a part of The Dwight D. Eisenhower System of Interstate and Defense Highways, regardless of whether the nature of such buildings or boats is such that they can

be readily dismantled or separated, may exceed the lengths and widths established in this article, provided that a special permit for such purposes has been issued as provided in this Code section, but no such special permit shall be issued for a load exceeding 12 feet in width when such load may be readily dismantled or separated. A truck tractor and low boy type trailer may, after depositing its permitted load, return to its point of origin on the authorization of its original permit.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the commissioner or an official of the department designated by the commissioner may, in his or her discretion, upon application in writing and good cause being shown therefor, issue to a specific tow vehicle a permit in writing authorizing the applicant to operate or move upon the state's public roads a motor vehicle or combination of vehicles and loads for transporting not more than two modular housing units or sectional housing units if the total weight, width, length, and height of the vehicle or combination of vehicles, including the load, does not exceed the limits specified in Code Sections 32-6-22 and 32-6-26. Permission to transport two modular housing units is only authorized when the modular unit transporter meets the minimum specifications contained in subparagraph (C) of this paragraph. No permit shall be issued to any vehicle or combination of vehicles whose operation upon the public roads of this state threatens the safety of others or threatens to damage unduly a road or any appurtenance thereto.

(C) A modular unit transporter shall meet all requirements of the Federal Motor Carrier Safety Administration and all state safety requirements, rules, and regulations. The modular unit transporter shall be properly registered and have a proper, current license plate. At a minimum, the modular unit transporter shall:

(i) Be constructed of 12 inch steel I beams doubled and welded together;

(ii) Have all axles equipped with brakes;

(iii) Have every floor joist on each modular section securely attached to the beams with lag bolts and washers, or lag bolts, washers, and cable winches; and

(iv) Have an overall length not to exceed 80 feet including the hitch.

(2) Permits may be issued, on application to the department, to persons, firms, or corporations without specifying license plate numbers in order that such permits which are issued on an annual basis may be interchanged from vehicle to vehicle. The department is

authorized to promulgate reasonable rules and regulations which are necessary or desirable to govern the issuance of such permits, provided that such rules and regulations are not in conflict with this title or other provisions of law.

(3) Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer, state trooper, or authorized agent of the department.

(4) The application for any such permit shall describe the type of permit applied for, as said types of permits are described in subsection (c) of this Code section. In addition, the application for a single-trip permit shall describe the points of departure and destination.

(5) The commissioner or an official of the department designated by the commissioner is authorized to withhold such permit or, if such permit is issued, to establish seasonal or other time limitations within which the vehicles described may be operated on the public road indicated, or otherwise to limit or prescribe conditions of operation of such vehicles when necessary to ensure against undue damage to the road foundation, surfaces, or bridge structures, and to require such undertaking or other security as may be deemed necessary to compensate the state for any injury to any roadway or bridge structure.

(6) For just cause, including, but not limited to, repeated and consistent past violations, the commissioner or an official of the department designated by the commissioner may refuse to issue or may cancel, suspend, or revoke the permit and any permit privileges of an applicant or permittee. The specific period of time of any suspension shall be determined by the department. In addition, any time the restrictions or conditions within which a permitted vehicle must be operated are violated, the permit may be immediately declared null and void.

(7) The department is authorized to promulgate rules and regulations necessary to enforce the suspension of permits authorized in this Code section.

(8) The department shall issue rules to establish a driver training and certification program for drivers of vehicles escorting oversize/overweight loads. Any driver operating a vehicle escorting an oversize/overweight load shall meet the training requirements and obtain certification under the rules issued by the department pursuant to this Code section. The rules may provide for reciprocity with other states having a similar program for escort certification. Certification credentials of the driver of an escort vehicle shall be carried in the

escort vehicle and be readily available for inspection by law enforcement personnel or an authorized employee of the department. The department shall implement the vehicle escort driver training and certification program on or before July 1, 2010, and the requirements for training and certification shall be enforced beginning on January 1, 2011.

(9) Permit holders shall be required to meet the following minimum insurance standards:

(A) For loads where the gross vehicle weight is less than or equal to 10,000 pounds:

(i) For bodily injury a limit of $50,000.00 per person for injury or death as a result of any one occurrence; and

(ii) For property damage a limit of $50,000.00 for damage to property of others in any one occurrence; or

(B) For commercial motor carriers where the gross vehicle weight is greater than 10,000 pounds:

(i) For bodily injury a minimum of $300,000.00 for each person and $1 million for multiple persons for injury or death as a result of any one occurrence; and

(ii) For property damage a minimum of $1 million for damage to property of others in any one occurrence.

(b) **Duration and limits of permits.**

(1) **Annual permit.** The commissioner or an official of the department designated by the commissioner may, pursuant to this Code section, issue an annual permit which shall permit a vehicle to be operated on the public roads of this state for 12 months from the date the permit is issued even though the vehicle or its load exceeds the maximum limits specified in this article. However, except as specified in paragraph (2) of this subsection, an annual permit shall not authorize the operation of a vehicle:

(A) Whose total gross weight exceeds 100,000 pounds;

(B) Whose single axle weight exceeds 25,000 pounds;

(C) Whose total load length exceeds 100 feet;

(D) Whose total width exceeds 102 inches or whose load width exceeds 144 inches; or

(E) Whose height exceeds 14 feet and six inches.

(2) **Annual permit plus.** Vehicles and loads that meet the requirements for an annual permit may apply for a special annual

permit to carry wider loads on the NHS. The wider load limits shall be a maximum of 14 feet wide from the base of the load to a point 10 feet above the pavement and 14 feet and eight inches for the upper portion of the load.

(3) **Annual commercial wrecker emergency tow permit.** Pursuant to this Code section, the commissioner may issue an annual permit for vehicles towing disabled, damaged, abandoned, or wrecked commercial vehicles, including combination vehicles, even though such wrecker or its load exceeds the maximum limits specified in this article. An annual commercial wrecker emergency tow permit shall not authorize the operation of a vehicle:

(A) Whose single axle weight exceeds 25,000 pounds;

(B) Whose load on one tandem axle exceeds 50,000 pounds and whose load on any secondary tandem axle exceeds 38,000 pounds; or

(C) Whose total load length exceeds 125 feet.

(4) **Six-month permit.** Six-month permits may be issued for loads of tobacco or unginned cotton the widths of which do not exceed nine feet, provided that such loads shall not be operated on The Dwight D. Eisenhower System of Interstate and Defense Highways.

(5) **Single trip.** Pursuant to this Code section, the commissioner may issue a single-trip permit to any vehicle or load allowed by federal law.

(6) **Multitrip.** Pursuant to this Code section, the commissioner may issue a multitrip permit to any vehicle or load allowed by federal law. A multitrip permit authorizes the permitted load to return to its original destination on the same permit, if done so within ten days, with the same vehicle configuration, and following the same route, unless otherwise specified by the department. A multitrip permit authorizes unlimited permitted loads on the same permit, if done so within the allowable ten days, with the same vehicle configuration, and following the same route.

(c) **Fees.** The department may promulgate rules and regulations concerning the issuance of permits and charge a fee for the issuance thereof as follows:

(1) **Annual.** Charges for the issuance of annual permits shall be $150.00 per permit.

(2) **Annual permit plus.** Charges for the issuance of annual permits plus shall be $500.00 per permit.

(3) **Annual commercial wrecker emergency tow permit.** Charges for the issuance of annual commercial wrecker emergency tow permits shall be $500.00 per permit.

(4) **Six months.** The charges for the issuance of six-month permits for loads of tobacco or unginned cotton shall be $25.00 per permit.

(5) **Single trip.** Charges for the issuance of single-trip permits shall be as follows:

(A) Any load not greater than 16 feet wide, not greater than 16 feet high, and not weighing more than 150,000 pounds or any load greater than 100 feet long which does not exceed the maximum width, height, and weight limits specified by this subparagraph ..... $ 30.00

(B) **Superload permit.** Any load having a width, height, or weight exceeding the maximum limit therefor specified in subparagraph (A) of this paragraph and not weighing more than 180,000 pounds 125.00

(C) **Superload plus permit.** Any load having a weight exceeding the maximum limit therefor specified in subparagraph (B) of this paragraph 500.00

(6) **Multitrip.** Charges for the issuance of multitrip permits shall be $100.00 for any load not greater than 16 feet wide, not greater than 16 feet high, and not weighing more than 150,000 pounds or any load greater than 100 feet long which does not exceed the maximum width, height, and weight limits specified by this paragraph.

(d) Notwithstanding any provision of Code Section 48-2-17 to the contrary, all fees collected in accordance with this Code section shall be paid to the treasurer of the department to help defray the expenses of enforcing the limitations set forth in this article and may also be used for public road maintenance purposes in addition to any sums appropriated therefor to the department. (Ga. L. 1968, p. 30, § 1; Ga. L. 1969, p. 637, § 1; Ga. L. 1971, p. 43, § 1; Ga. L. 1971, p. 462, §§ 2, 3; Ga. L. 1972, p. 356, §§ 1, 2; Code 1933, § 95A-961, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 38; Ga. L. 1975, p. 400, § 1; Ga. L. 1979, p. 439, § 4; Ga. L. 1980, p. 576, § 7; Ga. L. 1982, p. 3, § 32; Ga. L. 1983, p. 1798, § 5; Ga. L. 1986, p. 471, §§ 1-3; Ga. L. 1986, p. 655, § 1; Ga. L. 1987, p. 846, § 1; Ga. L. 1992, p. 987, § 1; Ga. L. 1992, p. 2467, §§ 2-4; Ga. L. 1993, p. 348, § 1; Ga. L. 1995, p. 10, § 32; Ga. L. 1995, p. 155, § 1; Ga. L. 1996, p. 1010, § 3; Ga. L. 1996, p. 1512, § 3A; Ga. L. 1999, p. 567, § 3; Ga. L. 2000, p. 136, § 32; Ga. L. 2000, p. 1654, § 2; Ga. L. 2002, p. 1126, §§ 5, 6; Ga. L. 2010, p. 442, § 3/HB 1174; Ga. L. 2011, p. 548, §§ 3, 4/SB 54; Ga. L. 2012, p. 732, § 1/HB 835; Ga. L. 2012, p. 775, § 32/HB 942; Ga. L. 2013, p. 738, § 1/SB 218.)

The 2013 amendment, effective July 1, 2013, in the introductory language of paragraph (b)(3), inserted "abandoned," and inserted ", including combination vehicles," in the first sentence, and substituted "An annual" for "However, an an-

nual" at the beginning of the second sentence; substituted "25,000 pounds" for "21,000 pounds" in subparagraph (b)(3)(A); and substituted "one tandem axle exceeds 50,000 pounds and whose load on any secondary tandem axle exceeds 38,000 pounds" for "any tandem axle exceeds 40,000 pounds" in subparagraph (b)(3)(B).

ARTICLE 3

CONTROL OF SIGNS AND SIGNALS

PART 1

PUBLIC ROADS GENERALLY

32-6-50. Uniform regulations governing erection and maintenance of traffic-control devices; placement, removal, defacement, damaging, or sale of devices.

JUDICIAL DECISIONS

State DOT not liable for failing to erect road closure signs on county road. — Because an accident occurred on a county-owned road and did not occur on a part of the state highway system upon which the DOT owed a duty to motorists, and the couple's expert's affidavit could not establish a legal duty to erect signs or to take other steps to inform drivers of the closure of the county-owned road, summary judgment for the DOT was proper. Diamond v. DOT, 326 Ga. App. 189, 756 S.E.2d 277 (2014).

PART 2

STATE HIGHWAY SYSTEM

32-6-70. Declaration of policy.

Law reviews. — For annual survey on business corporations, see 64 Mercer L. Rev. 61 (2012).

32-6-75. Restrictions on outdoor advertising authorized by Code Sections 32-6-72 and 32-6-73; multiple message signs on interstate system, primary highways, and other highways.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

32-6-75.3. Application for tree trimming permit and annual renewal; forms; application fees; evaluation; criteria for trimming trees or vegetation.

JUDICIAL DECISIONS

Constitutionality. — In a city's suit challenging vegetation removal around billboard advertising, the Supreme Court of Georgia upheld the constitutionality of the billboard advertising statute, O.C.G.A. § 32-6-75.3 because the Georgia legislature has found that outdoor advertising provides a substantial service and benefit to the traveling public. City of Columbus v. Ga. Dep't of Transp., 292 Ga. 878, 742 S.E.2d 728 (2013).

Billboard advertising statute constitutional. — Trial court properly determined that the billboard advertising statute, O.C.G.A. § 32-6-75.3(j), did not violate the trustees clause because the trustees clause did not apply because the city's challenges to the statute did not involve a public officer reaping personal financial gain at the expense of the public. City of Columbus v. Ga. Dep't of Transp., 292 Ga. 878, 742 S.E.2d 728 (2013).

Take down credits for removal of billboards. — Trial court erred in holding that the take-down credits under O.C.G.A. § 32-6-75.3(j) violated the gratuities clause because, to the contrary, the Supreme Court of Georgia has found that the Georgia legislature has explicitly determined that removal of outdated signs provides a benefit to the State of Georgia and that there would be a financial benefit in allowing take-down credits. City of Columbus v. Ga. Dep't of Transp., 292 Ga. 878, 742 S.E.2d 728 (2013).

CHAPTER 7

ABANDONMENT, DISPOSAL, OR LEASING OF PROPERTY NOT NEEDED FOR PUBLIC ROAD PURPOSES

Sec.
32-7-4. Procedure for disposition of property.

32-7-1. Authority of department, counties, and municipalities to substitute for, relocate, or abandon public roads.

Law reviews. — For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

JUDICIAL DECISIONS

Judicial review of abandonment decision. — In a mandamus action, a trial court erred by reversing a decision of a county board of commissioners to abandon a road as the trial court failed to give proper deference to the board's decision to abandon the road and substituted the court's own judgment for that of the board. Scarborough v. Hunter, 293 Ga. 431, 746 S.E.2d 119 (2013).

32-7-2. Procedure for abandonment.

Law reviews. — For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

JUDICIAL DECISIONS

Distinction between abandonment and failure to maintain. — Standard of review on appeal with respect to a mandamus order involving the superior court's review of a county's decision to abandon a public road pursuant to O.C.G.A. § 32-7-2(b)(1) is whether there is any evidence supporting the decision of the local governing body, not whether there is any evidence supporting the decision of the superior court. This standard is not applicable if the issue on appeal involves the county's failure to properly build, repair, and maintain county roads. Burke County v. Askin, 294 Ga. 634, 755 S.E.2d 747 (2014).

Judicial review of abandonment decision. — In a mandamus action, a trial court erred by reversing a decision of a county board of commissioners to abandon a road as the trial court failed to give proper deference to the board's decision to abandon the road and substituted the court's own judgment for that of the board. Scarborough v. Hunter, 293 Ga. 431, 746 S.E.2d 119 (2013).

32-7-3. Authority of department, counties, and municipalities to dispose of property no longer needed for public road purposes.

JUDICIAL DECISIONS

Application. — Trial court properly granted summary judgment to a county and purchaser, because the prior owner of the property condemned by the county never had a binding contract with the county to re-purchase a remnant, unused portion and there was no conflict between O.C.G.A. §§ 32-7-3, 32-7-4, and 36-9-3(h) and the county's code amendment. Hubert Props., LLP v. Cobb County, 318 Ga. App. 321, 733 S.E.2d 373 (2012).

32-7-4. Procedure for disposition of property.

(a)(1) In disposing of property, as authorized under Code Section 32-7-3, the department, a county, or a municipality, provided that such department, county, or municipality has held title to the property for no more than 30 years, shall notify the owner of such property at the time of its acquisition or, if the tract from which the department, a county, or a municipality acquired its property has been subsequently sold, shall notify the owner of abutting land holding title through the owner from whom the department, a county, or a municipality acquired its property. In the event that all or a portion of the property subject to disposition is a roadway located in a subdivision with a duly formed property owner's association, the notice for that roadway portion of the property within such subdivision may be provided to the association in lieu of the individual owners of abutting land. The notice shall be in writing delivered to

the appropriate owner or association or by publication if the owner's or association's address is unknown; and the owner or the association, as applicable, shall have the right to acquire, as provided in this subsection, the property with respect to which the notice is given. Publication, if necessary, shall be in a newspaper of general circulation in the county where the property is located. If, after a search of the available public records, the address of any interested party cannot be found, a record of the facts and reciting the steps taken to establish the address of any such person shall be placed in the department, county, or municipal records and shall be accepted in lieu of service of notice by mailing the same to the last known address of such person. After properly completing and documenting the search, the department, county, or municipality may dispose of the property in accordance with the provisions of subsection (b) of this Code section.

(2)(A) When an entire parcel acquired by the department, a county, or a municipality, or any interest therein, is being disposed of, it may be acquired under the right created in paragraph (1) of this subsection at such price as may be agreed upon, but in no event less than the price paid for its acquisition. When only remnants or portions of the original acquisition are being disposed of, they may be acquired for the market value thereof at the time the department, county, or municipality decides the property is no longer needed. The department shall use a real estate appraiser with knowledge of the local real estate market who is licensed in Georgia to establish the fair market value of the property prior to listing such property.

(B) The provisions of subparagraph (A) of this paragraph notwithstanding, if the value of the property is $75,000.00 or less as determined by department estimate, the department, county, or municipality may negotiate the sale.

(3) If the right of acquisition is not exercised within 30 days after due notice, the department, county, or municipality may proceed to sell such property as provided in subsection (b) of this Code section.

(4) When the department, county, or municipality in good faith and with reasonable diligence attempted to ascertain the identity of persons entitled to notice under this Code section and mailed such notice to the last known address of record of those persons or otherwise complied with the notification requirements of this Code section, the failure to in fact notify those persons entitled thereto shall not invalidate any subsequent disposition of property pursuant to this Code section.

(b)(1)(A) Unless a sale of the property is made pursuant to paragraph (2) or (3) of this subsection, such sale shall be made to the bidder

submitting the highest of the sealed bids received after public advertisement for such bids for two weeks. If the highest of the sealed bids received is less than but within 15 percent of the established market value, the department may accept that bid and convey the property in accordance with the provisions of subsection (c) of this Code section. The department or the county or municipality shall have the right to reject any and all bids, in its discretion, to readvertise, or to abandon the sale.

(B) Such public advertisement shall be inserted once a week in such newspapers or other publication, or both, as will ensure adequate publicity, the first insertion to be at least two weeks prior to the opening of bids, the second to follow one week after the first publication. Such advertisement shall include but not be limited to the following items:

(i) A description sufficient to enable the public to identify the property;

(ii) The time and place for submission and opening of sealed bids;

(iii) The right of the department or the county or municipality to reject any one or all of the bids;

(iv) All the conditions of sale; and

(v) Such further information as the department or the county or municipality may deem advisable as in the public interest.

(2)(A) Such sale of property may be made by the department or a county or municipality by listing the property through a real estate broker licensed under Chapter 40 of Title 43 who has a place of business located in the county where the property is located or outside the county if no such business is located in the county where the property is located. Property shall be listed for a period of at least three months. Such property shall not be sold at less than its fair market value. The department shall use a real estate appraiser with knowledge of the local real estate market who is licensed in Georgia to establish the fair market value of the property prior to listing such property. All sales shall be approved by the commissioner on behalf of the department or shall be approved by the governing authority of the county or municipality at a regular meeting that shall be open to the public, and public comments shall be allowed at such meeting regarding such sale.

(B) Commencing at the time of the listing of the property as provided in subparagraph (A) of this paragraph, the department, county, or municipality shall provide for a notice to be inserted once a week for two weeks in the legal organ of the county indicating the

names of real estate brokers listing the property for the political subdivision. The department, county, or municipality may advertise in magazines relating to the sale of real estate or similar publications.

(C) The department, county, or municipality shall have the right to reject any and all offers, in its discretion, and to sell such property pursuant to the provisions of paragraph (1) of this subsection.

(3)(A) Such sale of property may be made by the department, a county, or a municipality to the highest bidder at a public auction conducted by an auctioneer licensed under Chapter 6 of Title 43. Such property shall not be sold at less than its fair market value.

(B) The department, county, or municipality shall provide for a notice to be inserted once a week for the two weeks immediately preceding the auction in the legal organ of the county including, at a minimum, the following items:

(i) A description sufficient to enable the public to identify the property;

(ii) The time and place of the public auction;

(iii) The right of the department or the county or municipality to reject any one or all of the bids;

(iv) All the conditions of sale; and

(v) Such further information as the department or the county or municipality may deem advisable as in the public interest.

The department, county, or municipality may advertise in magazines relating to the sale of real estate or similar publications.

(C) The department, county, or municipality shall have the right to reject any and all offers, in its discretion, and to sell such property pursuant to the provisions of paragraph (1) or (2) of this subsection.

(c) Any conveyance of property shall require the approval of the department, county, or municipality, by approval of the commissioner on behalf of the department and, in the case of a county or municipality, by resolution, to be recorded in the minutes of its meeting. If the department or the county or municipality approves a sale of property, the commissioner, chairperson, or presiding officer may execute a quitclaim deed conveying such property to the purchaser. All proceeds arising from such sales shall be paid into and constitute a part of the funds of the seller. (Code 1933, § 95A-621, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 16A; Ga. L. 1995, p. 1195, § 1; Ga. L.

2008, p. 726, § 1/SB 444; Ga. L. 2009, p. 8, § 32/SB 46; Ga. L. 2015, p. 1072, § 3/SB 169; Ga. L. 2015, p. 1358, § 1/HB 477.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, in paragraph (a)(1), added the proviso in the first sentence, substituted "search of the available public records, the address of any interested party cannot be found, a record of the facts" for "search of the land and probate records, the address of any interested party cannot be found, an affidavit stating such facts" near the middle of the fourth sentence, and substituted "completing and documenting the search" for "completing and filing such affidavit" near the middle of the last sentence; deleted "and not an employee of the department" following "Georgia" in the last sentence of subparagraph (a)(2)(A) and in the third sentence of subparagraph (b)(2)(A); in subparagraph (a)(2)(B), substituted "$75,000.00" for "$30,000.00"; in paragraph (a)(3), substituted "30 days" for "60 days"; in paragraphs (b)(2) and (b)(3), inserted "department," throughout; in subparagraph (b)(2)(A), inserted "the department or" near the beginning of the first sentence, in the last sentence, inserted "the commissioner on behalf of the department or shall be approved by" and substituted "regular meeting that shall be open to the public, and public comments shall be allowed at such meeting" for "regular meeting and shall be open to the public at which meeting public comments shall be allowed"; in subparagraphs (b)(2)(B), (b)(2)(C), (b)(3)(A), and (b)(3)(B), added a comma following "county"; in subparagraph (b)(3)(A), inserted "the department," and substituted "or a municipality" for "or municipality"; in subparagraph (b)(3)(C), inserted "or (2)"; and substituted "approval of the commissioner" for "order of the commissioner" in the first sentence of subsection (c). The second 2015 amendment, effective May 12, 2015, in paragraph (a)(1), added the second sentence, and substituted "owner or association or by publication if the owner's or association's address is unknown; and the owner or the association, as applicable," for "owner or by publication if his or her address is unknown; and he or she" in the third sentence.

JUDICIAL DECISIONS

Application. — Trial court properly granted summary judgment to a county and purchaser because the prior owner of the property condemned by the county never had a binding contract with the county to re-purchase a remnant, unused portion and there was no conflict between O.C.G.A. §§ 32-7-3, 32-7-4, and 36-9-3(h) and the county's code amendment. Hubert Props., LLP v. Cobb County, 318 Ga. App. 321, 733 S.E.2d 373 (2012).

CHAPTER 9

MASS TRANSPORTATION

Sec.
32-9-8.1. Installation of safety markers on utility lines to provide for adequate visual warning in use of private airstrips; definitions; powers and duties of department.
Sec.
32-9-10. Implementation of federal Transportation Safety Program.
32-9-13 and 32-9-14. [Repealed].

32-9-8.1. Installation of safety markers on utility lines to provide for adequate visual warning in use of private airstrips; definitions; powers and duties of department.

(a) As used in this Code section, the term:

(1) "Appurtenant utility line" means an above ground electrical power line or nonelectrical cable or wire that penetrates a 20:1 approach slope as measured from the runway threshold at either end of the private airstrip.

(2) "Installation fee schedule" means a listing of fees necessary to purchase and install safety markers as determined by the department.

(3) "Private airstrip" means a privately owned landing strip for airplanes, gliders, or helicopters for personal or private use that is not open to the general public and not subject to the provisions of Code Section 32-9-8.

(4) "Safety marker" means a highly visible object or device affixed to an appurtenant utility line which alerts operators of aircraft to the existence of the appurtenant utility line.

(b) Any owner of a private airstrip may make a written notice, either by certified mail or statutory overnight delivery, return receipt requested, to an owner of an appurtenant utility line requesting the installation of safety markers. Such notice shall be accompanied by a check or money order in the amount of $100.00 made payable to the owner of the appurtenant utility line for the work to be performed by the owner of the appurtenant utility line under paragraphs (1) and (2) of this subsection. Within 90 days of the owner of an appurtenant utility line's receipt of such written notice, the owner of the appurtenant utility line shall:

(1) Determine the appropriate type, number, and location of safety markers to be installed on the appurtenant utility line which will provide adequate visual warning to the flying public of the close proximity of the appurtenant utility lines to the private airstrip;

(2) Determine the installation fee costs for the installation of such safety markers based on the installation fee schedule developed by the department; and

(3) Provide notice to the owner of the private airstrip as to the type, number, location, and installation fee of the requisite safety markers.

The owner of the appurtenant utility line shall file a request for review pursuant to subsection (e) of this Code section if such owner is unable

to comply or anticipates being unable to comply with this subsection for any reason, including but not limited to the time provided for responding to the owner of the private airstrip, the time provided for installation, or the fees set in the installation fee schedule.

(c) The owner of the private airstrip shall have 90 days from the receipt of notice under paragraph (3) of subsection (b) of this Code section to:

(1) Remit to the owner of the appurtenant utility line the full amount of the installation fee;

(2) File a request for review pursuant to subsection (e) of this Code section; or

(3) Provide written notice to the owner of the appurtenant utility line of his or her decision not to pursue the installation of the safety markers. If the owner of the private airstrip provides such written notice or does not take any action under paragraph (1) or (2) of this subsection, the owner of the appurtenant utility line shall have no further obligation under this Code section; provided, however, that this paragraph shall not be construed to prohibit the owner of the private airstrip from sending written notice pursuant to subsection (b) of this Code section to the same owner of an appurtenant utility line in any subsequent calendar year so long as the owner of the private airstrip does not exceed one written notice to the same owner of an appurtenant utility line in any calendar year.

(d) If the owner of the private airstrip pays the full amount of the installation fee under paragraph (1) of subsection (c) of this Code section, the owner of the appurtenant utility line shall have 90 days from receipt of payment to purchase the safety markers and complete the installation. The owner of the appurtenant utility line shall file a request for review pursuant to subsection (e) of this Code section and may be granted up to two extensions of time not to exceed 90 days total upon a showing that the need for an extension is the result of force majeure, grid reliability, work scheduling conflicts, or the lack of market supply of the requisite safety markers and other necessary equipment.

(e) If any owner of an appurtenant utility line fails to comply with any provision of this Code section or any owner of an appurtenant utility line anticipates an inability to comply with any provision of this Code section, then an order enforcing this Code section or granting an exception may be sought from the department. Either party may file with the department a written request for review of the matter. Any such request for review shall be accompanied by a filing fee of $50.00 and shall include any documents or forms required by the department. A copy of such request for review shall be served upon the other party

by certified mail or statutory overnight delivery, return receipt requested. The department shall within 30 days after the filing of such request investigate the matter and issue an order either requiring the owner of the appurtenant utility line to take such action as is necessary for purposes of compliance with this Code section or grant an exception to the owner of the appurtenant utility line as to time for compliance or a deviation from the installation fee schedule of the department. Copies of any such order of the department shall be served upon all parties by certified mail or statutory overnight delivery, return receipt requested. The department shall keep detailed records of its costs of investigation and review for purposes of this subsection, and such records shall be subject to public inspection as provided by Article 4 of Chapter 18 of Title 50.

(f) If any owner of an appurtenant utility line fails to comply with any order of the department under subsection (e) of this Code section within 15 days after receipt of such order, then after notice and opportunity for a hearing, such owner of an appurtenant utility line shall be subject to a civil penalty in the amount of $1,000.00 per day beginning 15 days after the date of receipt of the order of the department until the owner of the appurtenant utility line has complied with the order of the department; provided, however, that the department may grant an extension of time for compliance without penalty upon a showing that the owner of the appurtenant utility line's failure to timely comply was due to force majeure. Any fine under this subsection shall be tolled for the period from the filing of a petition for a judicial review and shall be subject to judicial review in such manner as is provided by law for judicial review of contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," until the rendering of a final decision.

(g) The department shall promulgate such rules and regulations as are necessary to implement the provisions of this Code section, including, but not limited to, the promulgation of rules and regulations to establish installation fee schedules based on utility best practices.

(h) An owner of a private airstrip shall have immunity from any civil liability that would otherwise be incurred or imposed as a result of taking or failing to take any action pursuant to this Code section. This Code section shall not be construed as imposing any additional duty on an owner of a private airstrip which is not already otherwise imposed by law. (Code 1981, § 32-9-8.1, enacted by Ga. L. 2014, p. 825, § 1/HB 494.)

Effective date. — This Code section became effective April 29, 2014, for purposes of proposing rules and regulations and effective for all other purposes on October 1, 2014.

32-9-10. Implementation of federal Transportation Safety Program.

(a) The purpose of this Code section is to implement the federal Public Transportation Safety Program, 49 U.S.C. Section 5329, referred to in this Code section as the act.

(b) For purposes of this Code section, the term "system" means a public transportation system having vehicles operated on a fixed guideway on steel rails, the steel of the wheels of such vehicles coming directly into contact with such rails, but excluding such systems that are subject to regulation by the Federal Railroad Administration. In addition, a "system" shall include all other public transportation systems that, under regulations issued pursuant to subsection (e) of the act, are subject to the act.

(c) The department is designated as the agency of this state responsible for implementation of the act.

(d) Each system operating in this state shall adopt and carry out a safety program plan that provides for the following:

(1) The plan shall establish safety requirements with respect to the design, manufacture, and construction of the equipment, structures, and fixtures of the system; the maintenance of equipment, structures, and fixtures; operating methods and procedures and the training of personnel; compliance with federal, state, and local laws and regulations applicable to the safety of persons and property; protection from fire and other casualties; and the security of passengers and employees and of property;

(2) The plan shall provide for measures reasonably adequate to implement the requirements established pursuant to paragraph (1) of this subsection; and

(3) The plan shall establish lines of authority, levels of responsibility and accountability, and methods of documentation adequate to ensure that it is implemented.

(e) The department shall have the following powers and duties:

(1) It shall review the safety program plan of each system and all revisions and amendments thereof and if it finds that the plan conforms to subsection (d) of this Code section shall approve it;

(2) It shall monitor the implementation of each system's plan;

(3) It shall have the power to require any system to revise or amend its safety program plan as may be necessary in order to comply with any regulations issued pursuant to subsection (e) of the act and any amendments or revisions thereof; and

(4) It shall investigate hazardous conditions and accidents on each system and, as appropriate, require that hazardous conditions be corrected or eliminated.

(f) If any system fails to comply with an order of the department to correct or to eliminate a hazardous condition, the department may apply for an order requiring such system to show cause why it should not do so. Such application shall be made to the superior court of the most populous county in which such system operates, as such population is determined according to the United States decennial census of 1990 or any future such census. If at the hearing upon such an order to show cause the court finds that the condition that is the subject of the order in fact creates an unreasonable risk to the safety of persons, property, or both, the court may order the system to comply with the department's order or to take such other corrective action as the court finds appropriate.

(g) Nothing in this Code section is intended to conflict with any provision of federal law; and, in case of such conflict, such portion of this Code section as may be in conflict with such federal law is declared of no effect to the extent of the conflict.

(h) The department is authorized to take the necessary steps to secure the full benefit of the federal-aid program and meet any contingencies not provided for in this Code section, abiding at all times by a fundamental purpose to perform all acts which are necessary, proper, or incidental to the efficient and safe operation and development of the department and the state highway system and of other modes and systems of transportation. (Code 1981, § 32-9-10, enacted by Ga. L. 1993, p. 1362, § 1; Ga. L. 2015, p. 1072, § 4/SB 169.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of subsection (a) for the former provisions, which read: "The purpose of this Code section is to implement Section 3029 of Public Law 102-240, the federal Intermodal Surface Transportation Efficiency Act of 1991, referred to in this Code section as the act."; and added subsections (g) and (h).

32-9-13 and 32-9-14.

Repealed by Ga. L. 2014, p. 649, § 1/HB 265, effective June 1, 2014.

Editor's notes. — These Code sections were based on Ga. L. 2010, p. 778, § 3/HB 277; Ga. L. 2012, p. 775, § 32/HB 942.

Ga. L. 2014, p. 649, § 3/HB 265 provides: "This Act shall become effective on June 1, 2014, only if an Act providing for the suspension of restrictions on the use of annual proceeds from sales and use taxes by the Metropolitan Atlanta Rapid Transit Authority and reconstituting the board of directors of the Metropolitan Atlanta Rapid Transit Authority is enacted at the 2014 regular session of the General Assembly. Otherwise, all provisions of this Act shall not become effective and shall stand repealed on June 1, 2014." The contingency was satisfied by the enactment of HB 264 at Ga. L. 2014, p. 634.

CHAPTER 10

PUBLIC AUTHORITIES

Article 2

State Road and Tollway Authority

PART 1

GENERAL PROVISIONS

Sec.
32-10-64. General toll powers; police powers; rules and regulations.
32-10-65. Fixing, revising, charging, and collecting tolls; use and disposition of tolls generally.

PART 2

REVENUE BONDS

32-10-109. Covenant with holders as to tax-exempt status of authority property and bonds.

PART 3

TRANSPORTATION INFRASTRUCTURE BANK

32-10-127. Loans and other financial assistance; determination of eligible projects.

ARTICLE 2

STATE ROAD AND TOLLWAY AUTHORITY

PART 1

GENERAL PROVISIONS

32-10-64. General toll powers; police powers; rules and regulations.

(a)(1) For the purpose of earning sufficient revenue to make possible, in conjunction with other funds available to the authority, the financing of the construction or acquisition of projects of the authority with revenue bonds, the authority is authorized and empowered to collect tolls on each and every project which it, the department, or local governing authority shall cause to be constructed. It is found, determined, and declared that the necessities of revenue bond financing are such that the authority's toll earnings on each project or projects, in conjunction with other funds available to the authority, must exceed the actual maintenance, repair, and normal reserve requirements of such projects, together with monthly or yearly sums needed for the sinking fund payments upon the principal and interest obligations of financing such project or projects; however, within the framework of these legitimate necessities of the authority and subject to all bond resolutions, trust indentures, and all other contractual obligations of the authority, the authority is charged with the duty of the operation of all projects in the aggregate at the most reasonable possible level of toll charges; and, furthermore, the authority is charged with the responsibility of a reasonable and equitable adjustment of such toll charges as between the various classes of users of

any given project in which the repayment of financing is the primary or exclusive purpose for the exercise of the toll power of the authority.

(2) For the purpose of managing the flow of traffic, the authority is authorized and empowered to collect tolls on each and every project which it, the department, or local governing authority shall cause to be constructed in which managing the flow of traffic is the primary or exclusive purpose. It is found, determined, and declared that the necessities of managing the flow of traffic are such that the authority is charged with the responsibility of taking into consideration value pricing and lane management as those terms are described in subsection (d) of Code Section 40-6-54 in determining toll charges on such projects.

(b) In the exercise of the authority's toll powers, the authority is authorized to exercise so much of the police powers of the state as shall be necessary to maintain the peace and accomplish the orderly handling of the traffic and the collection of tolls on all projects operated by the authority; and the authority shall prescribe such rules and regulations for the method of taking tolls and the employment and conduct of toll takers and other operating employees as the authority, in its discretion, may deem necessary.

(c)(1) No motor vehicle shall be driven or towed through a toll collection facility, where appropriate signs have been erected to notify traffic that it is subject to the payment of tolls beyond such sign, without payment of the proper toll. In the event of nonpayment of the proper toll, as evidenced by video or electronic recording, the registered owner of such vehicle shall be liable to make prompt payment to the authority of the proper toll and an administrative fee of up to $25.00 per violation to recover the cost of collecting the toll. The authority or its authorized agent shall provide notice to the registered owner of a vehicle, and a reasonable time to respond to such notice, of the authority's finding of a violation of this subsection. The authority or its authorized agent may provide subsequent notices to the registered owner of a vehicle if such owner fails to respond to the initial notice. The administrative fee may increase with each notice, provided that such fee shall not exceed a cumulative total of $25.00 per violation. Upon failure of the registered owner of a vehicle to pay the proper toll and administrative fee to the authority after notice thereof and within the time designated in such notice, the authority may proceed to seek collection of the proper toll and the administrative fee as debts owing to the authority, in such manner as the authority deems appropriate and as permitted under law. If the authority finds multiple failures by a registered owner of a vehicle to pay the proper toll and administrative fee after notice thereof and within the time designated in such notices, the authority may refer

the matter to the Office of State Administrative Hearings. The scope of any hearing held by the Office of State Administrative Hearings shall be limited to consideration of evidence relevant to a determination of whether the registered owner has failed to pay, after notice thereof and within the time designated in such notice, the proper toll and administrative fee. The only affirmative defense that may be presented by the registered owner of a vehicle at such a hearing is theft of the vehicle, as evidenced by presentation at the hearing of a copy of a police report showing that the vehicle has been reported to the police as stolen prior to the time of the alleged violation. A determination by the Office of State Administrative Hearings of multiple failures to pay by a registered owner of a vehicle shall subject such registered owner to imposition of, in addition to any unpaid tolls and administrative fees, a civil monetary penalty payable to the authority of not more than $70.00 per violation. Upon failure by a registered owner to pay to the authority, within 30 days of the date of notice thereof, the amount determined by the Office of State Administrative Hearings as due and payable for multiple violations of this subsection, the motor vehicle registration of such registered owner shall be immediately suspended by operation of law. The authority shall give notice to the Department of Revenue of such suspension. Such suspension shall continue until the proper toll, administrative fee, and civil monetary penalty as have been determined by the Office of State Administrative Hearings are paid to the authority. Actions taken by the authority under this subsection shall be made in accordance with policies and procedures approved by the members of the authority.

(2) The registered owner of a vehicle which is observed being driven or towed through a toll collection facility without payment of the proper toll may avoid liability under this subsection by presenting to the authority a copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation.

(3) For purposes of this subsection, for any vehicle which is registered to an entity other than a natural person, the term "registered owner" shall be deemed to refer to the natural person who is the operator of such motor vehicle at the time of the violation of this subsection, but only if the entity to which the vehicle is registered has supplied to the authority, within 60 days following notice from the authority or its authorized agent, information in the possession of such entity which is sufficient to identify and give notice to the natural person who was the operator of the motor vehicle at the time of the violation of this subsection.

(d) Any person who shall use or attempt to use any currency or coins other than legal tender of the United States of America or tokens issued

by the authority or who shall use or attempt to use any electronic device or equipment not authorized by the authority in lieu of or to avoid payment of a toll shall be guilty of a misdemeanor.

(e) Any person, except an authorized agent or employee of the authority, who removes any coin from the pavement or ground surface within 15 feet of a toll collection booth or toll collection machine, except to retrieve coins the person dropped while attempting payment of that person's toll, shall be guilty of a misdemeanor.

(f) Any person who enters without authorization or who willfully, maliciously, and forcibly breaks into any mechanical or electronic toll collection device of the authority or appurtenance thereto shall be guilty of a misdemeanor.

(g) Any law enforcement officer shall have the authority to issue citations for toll evasions if such officer is a witness to any of the following violations:

(1) A person forcibly or fraudulently passes a toll collection device without payment or refuses to pay, evades, or attempts to evade the payment of such tolls;

(2) A person turns, or attempts to turn, a vehicle around on a bridge, approach, or toll plaza where signs have been erected forbidding such turning; or

(3) A person refuses to pass through the toll collection facility after having come within the area where signs have been erected notifying traffic that it is entering the area where a toll is collectable or where vehicles may not turn around and where vehicles are required to pass through the toll gates for the purposes of collecting tolls.

(h) The authority may in its discretion use such technology, including but not limited to automatic vehicle license tag identification photography and video surveillance, either by electronic imaging or photographic copy, that it deems necessary to aid in the collection of tolls and enforcement of toll violations. Such technology shall not be used to produce any photograph, microphotograph, electronic image, or videotape showing the identity of any person in a motor vehicle except that such technology may be utilized for general surveillance of a toll collection facility for the security of toll collection facility employees.

(i) State and local law enforcement entities are authorized to enter into traffic and toll enforcement agreements with the authority. Any funds received by a state law enforcement entity pursuant to such toll enforcement agreement shall be subject to annual appropriations by the General Assembly to such law enforcement entity for the purpose of performing its duties pursuant to such agreement. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 8; Ga. L. 1972, p. 179, § 15; Code 1933,

§ 95A-1245, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1979, p. 1091, § 2; Ga. L. 1988, p. 227, § 5; Ga. L. 1993, p. 366, § 2; Ga. L. 2001, p. 1251, § 1-10; Ga. L. 2004, p. 498, § 1; Ga. L. 2006, p. 308, § 1/HB 1190; Ga. L. 2015, p. 1058, § 1/SB 125.)

The 2015 amendment, effective May 6, 2015, designated the previously existing provisions of subsection (a) as paragraph (a)(1); in paragraph (a)(1), in the first sentence, inserted "the department, or local governing authority", and deleted "or acquired" at the end, added "in which the repayment of financing is the primary or exclusive purpose for the exercise of the toll power of the authority" at the end of the last sentence, and added paragraph (a)(2); and, in paragraph (c)(1), inserted "up to" in the second sentence, added the fourth and fifth sentences, and substituted "notices" for "notice" in the seventh sentence.

32-10-65. Fixing, revising, charging, and collecting tolls; use and disposition of tolls generally.

The authority is authorized to fix, revise, charge, and collect tolls for the use of each project. Such tolls shall be so fixed and adjusted as to carry out and perform the terms and provisions of any resolution, trust indenture, or contract with or for the benefit of bondholders; and such tolls shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the state. Notwithstanding any provision of this article to the contrary, if the repayment of financing is not the primary or exclusive purpose for the exercise of the authority's toll power, the authority shall not be required to issue or have outstanding bonds or other indebtedness in respect to a project in order to fix, revise, charge, enforce, or collect tolls for such project. The use and disposition of tolls and revenues shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust indenture securing the same, if there are any. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 33; Code 1933, § 95A-1270, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2015, p. 1058, § 2/SB 125.)

The 2015 amendment, effective May 6, 2015, added the third sentence in this Code section.

Part 2

Revenue Bonds

32-10-109. Covenant with holders as to tax-exempt status of authority property and bonds.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purpose are in all respects for the benefit of the people of this state and that the authority is an institution of purely public charity and will be performing an

essential governmental function in the exercise of the power conferred upon it by this article; and this state covenants with the holders of the bonds that the authority shall not be required to pay any taxes or assessments upon any of the property acquired or leased by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the projects erected by it or upon any fees, tolls, or other charges for the use of such projects or upon other income received by the authority. The bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within this state. The tax exemption provided for in this chapter shall include an exemption from sales and use tax on property purchased by the authority or for use by the authority. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 28; Code 1933, § 95A-1265, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2015, p. 1058, § 3/SB 125.)

The 2015 amendment, effective May 6, 2015, added the last sentence in this Code section.

Part 3

Transportation Infrastructure Bank

32-10-127. Loans and other financial assistance; determination of eligible projects.

(a) The bank may provide loans and other financial assistance to a government unit to pay for all or part of the eligible costs of a qualified project. The term of the loan or other financial assistance shall not exceed the useful life of the project. The bank may require the government unit to enter into a financing agreement in connection with its loan obligation or other financial assistance. The board shall determine the form and content of loan applications, financing agreements, and loan obligations including the term and rate or rates of interest on a financing agreement. The terms and conditions of a loan or other financial assistance from federal accounts shall comply with applicable federal requirements.

(b)(1) The board shall determine which projects are eligible projects and then select from among the eligible projects qualified projects. When determining eligibility, the board shall make every effort to balance any loans or other financial assistance among all regions of this state.

(2) Preference for loans may be given to eligible projects in tier 1 and tier 2 counties, as defined in Code Section 48-7-40 and by the Department of Community Affairs.

(3) Preference for grants and other financial assistance may be given to eligible projects which have local financial support. (Code 1981, § 32-10-127, enacted by Ga. L. 2008, p. 73, § 2/HB 1019; Ga. L. 2015, p. 236, § 6-1/HB 170.)

The 2015 amendment, effective July 1, 2015, in subsection (b), designated the previously existing provisions as paragraphs (b)(1) and (b)(2), added the second sentence to paragraph (b)(1), substituted the present provisions of paragraph (b)(2) for "Preference may be given to eligible projects which have local financial support.", and added paragraph (b)(3).

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act."

CHAPTER 12

GEORGIA COORDINATING COMMITTEE FOR RURAL AND HUMAN SERVICES TRANSPORTATION

Sec.
32-12-1 through 32-12-6 [Repealed].

32-12-1 through 32-12-6.

Repealed by Ga. L. 2015, p. 950, § 1/HB 386, effective July 1, 2015.

Editor's notes. — This chapter consisted of Code Sections 32-12-1 through 32-12-6, relating to Georgia Coordinating Committee For Rural and Human Services Transportation, and was based on Ga. L. 2010, p. 778, § 4/HB 277; Ga. L. 2011, p. 705, § 5-19/HB 214.